

Summer 1978

A Summary and Background Analysis of the Proposed 1978 Constitutional Revisions

Alaine S. Williams

Follow this and additional works at: <http://ir.law.fsu.edu/lr>



Part of the [Constitutional Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Alaine S. Williams, *A Summary and Background Analysis of the Proposed 1978 Constitutional Revisions*, 6 Fla. St. U. L. Rev. 1115 (2014) .
<http://ir.law.fsu.edu/lr/vol6/iss3/22>

This Article is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in Florida State University Law Review by an authorized editor of Scholarship Repository. For more information, please contact bkaplan@law.fsu.edu.

A SUMMARY AND BACKGROUND ANALYSIS OF THE PROPOSED 1978 CONSTITUTIONAL REVISIONS

ALAINE S. WILLIAMS*

The 1978 Florida Constitution Revision Commission has proposed many changes throughout the constitution. This summary is designed to inform readers of the substance and history of the commission proposals by tracing the emergence of each major change. This approach should give interested persons guidance and direction to investigate further.

Not every proposed change is discussed. Some technical changes—for example, the renumbering of sections—are not analyzed. However, the complete text of the proposed constitution is reprinted in this issue and should be referred to for these and other proposed changes. In addition, many of the major proposals are treated in detail in the articles and notes of this symposium.

An inadequate record of revision proceedings has led to problems in construing the 1968 constitution, and many of the participants in the last revision effort warned the 1978 commission not to make the same mistake. For this reason, the record of the proceedings of the 1978 revision commission has been carefully compiled and will be widely available in microfiche form.

ARTICLE I

I. SECTION 1: POLITICAL POWER

The new language in this section would recognize that rights guaranteed by the state constitution are not dependent on the Federal Constitution for their meaning. For an analysis of this provision, see Dore, *Of Rights Lost and Gained*, *supra* this issue.

II. SECTION 2: BASIC RIGHTS

This provision would add sex to the list of characteristics which may not be used as bases for depriving persons of their rights. For an analysis of this provision, see Note, *One Small Word: Sexual Equality Through the State Constitution*, *supra* this issue.

* The author served as a research assistant to the 1978 Florida Constitution Revision Commission.

III. SECTION 6: RIGHT TO WORK

This provision would prohibit the use of binding arbitration by public employees and employers to resolve impasses in interest arbitration. For an analysis of this provision, see Note, *Prohibiting Binding Arbitration: The Proposed Change in Article I, Section 6*, *supra* this issue.

IV. SECTION 9: DUE PROCESS

This provision would require transactional immunity for persons compelled to testify or to produce evidence which may tend to incriminate them. For discussions of this new provision, see Note, *The Florida Grand Jury: Abolition or Reform?*, 5 FLA. ST. U. L. REV. 829 (1977), and Dore, *Of Rights Lost and Gained*, *supra* this issue.

V. SECTION 14: RELEASE PRIOR TO TRIAL

This section would provide a presumption in favor of nonmonetary bail. For a detailed analysis of this new section, see Brummer & Rogow, *An End to Ransom: The Case for Amending the Bail Provision of the Florida Constitution*, *supra* this issue.

VI. SECTION 15: PROSECUTION FOR CRIME; TESTIMONY BEFORE GRAND JURY; RIGHT TO COUNSEL BEFORE GRAND JURY; OFFENSES COMMITTED BY CHILDREN

There are four proposed changes in this section, all relating to the grand jury. A two-thirds vote of the members of a grand jury would be required to return an indictment. A person called to testify before a grand jury would have to be advised of his right to counsel and would have to be granted immunity for compelled testimony. The right to be accompanied by and to receive the advice of counsel during grand jury proceedings also would be provided. And, lastly, a person under investigation by the grand jury would have to be notified that he is the target of the investigation prior to his testimony. For a discussion of this section, see Dore, *Of Rights Lost and Gained*, *supra* this issue.

VII. SECTION 20: NATURAL RESOURCES AND SCENIC BEAUTY; USE OF PUBLIC BEACHES

This section would be changed by deleting the treason provision because it is antiquated and unnecessary, and by transferring the natural resources and scenic beauty section from article II, section 7. Additionally, a new provision would require that publicly owned, leased, or managed beaches and seashore recreational areas would

be open to the public. For an analysis of the open beaches provision, see Note, *Open Beaches in Florida: Right or Rhetoric?*, *supra* this issue.

VIII. SECTION 23: RIGHT OF PRIVACY

This new section would establish the right of all natural persons to be let alone and to be free from governmental intrusion into their private lives. For an analysis of this section, see Note, *Toward a Right of Privacy as a Matter of State Constitutional Law*, 5 FLA. ST. U.L. REV. 633 (1977), and Cope, *To Be Let Alone: Florida's Proposed Right of Privacy*, *supra* this issue.

IX. SECTION 24: PUBLIC RECORDS

The public records law would be elevated to constitutional status by this new provision. It also would extend the public's right of access to the records of the legislature. Records could be exempted—but only when the exemption is essential to protect privacy interests or to accomplish overriding governmental purposes. For an analysis of this section, see Dore, *Of Rights Lost and Gained*, *supra* this issue, and Cope, *To Be Let Alone: Florida's Proposed Right of Privacy*, *supra* this issue.

X. SECTION 25: OPEN MEETINGS

The open meetings law would be elevated to constitutional status by this provision. It would also extend the public's right of access to the legislature. Meetings could be closed by the legislature but only when essential to protect privacy interests or accomplish overriding governmental purposes. For an analysis of this section, see Dore, *Of Rights Lost and Gained*, *supra* this issue, and Cope, *To Be Let Alone: Florida's Proposed Right of Privacy*, *supra* this issue.

ARTICLE II

SECTION 5: PUBLIC OFFICERS

Two changes have been proposed in subsection (a) of section 5. The first change would permit any public officer to hold additional nonelective offices as provided by law. Currently, dual officeholding is prohibited. However, in many communities in the state, elected county or city commissioners serve as officers on appointed boards

such as water management districts or pension boards.¹ The change would allow the legislature to make exceptions to the general prohibition of dual officeholding, but only by general law.²

This change was not among the suggestions originally made to the commission; nor was it considered by a committee. It was introduced as a proposal by Commissioner DeGrove,³ amended,⁴ and adopted by the commission.⁵ The Committee on Style and Drafting suggested a grammatical change which was adopted.⁶

The other change recommended in subsection (a) would provide that a Cabinet officer may not be elected to a third consecutive term if he has already served, or but for resignation would have served, in that office for more than six years in two consecutive terms. A schedule is included which provides that any Cabinet member in office on January 2, 1979, may thereafter serve one additional consecutive term. Presently, Cabinet members can serve unlimited terms,⁷ whereas the Governor is limited to two four-year terms.⁸

A suggestion to limit the terms of Cabinet officers was on the original list of suggestions made to the commission⁹ and was designated for further study.¹⁰ The Executive Committee introduced a proposal to accomplish the change.¹¹ The proposal was to change article IV, § 5(b), pertaining to election of the Governor. Although

1. Transcript of Fla. C.R.C. proceedings 194 (Jan. 27, 1978) (remarks of Commissioner DeGrove).

2. The requirement that the legislature act by general law rather than by special law should ensure that the spirit of the prohibition of dual officeholding is preserved.

3. Fla. C.R.C., Proposal 257. Commissioner DeGrove served as vice-chairman of the South Florida Water Management District.

4. 25 Fla. C.R.C. Jour. 359 (Jan. 27, 1978) (amend. 1).

5. *Id.*

6. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 12 (Mar. 6, 1978); 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978).

7. An example is Nathan Mayo. He served as commissioner of agriculture from November 1, 1923, until his death on April 14, 1960. His successor, Doyle Conner, is now in his 18th year as commissioner.

Cabinet incumbents are rarely defeated in their bids for reelection. From 1900 to 1974, only five incumbents have been defeated: William N. Sheats was defeated as superintendent of public instruction in 1904 (but regained the office in 1912); Ernest Amos was defeated as comptroller in 1932; W.S. Cawthon was defeated as superintendent of public instruction in 1936; Broward Williams was defeated as treasurer in 1970; and Fred O. Dickinson was defeated as comptroller in 1974. A. MORRIS, *THE FLORIDA HANDBOOK 1977-1978*, at 47 (1977).

8. See FLA. CONST. art. IV, § 5(b).

9. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 24 (Sept. 27, 1977) (suggestions submitted by the public).

10. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 8 (Sept. 28, 1977).

11. Fla. C.R.C., Proposal 113. The actual number of years and consecutive terms served were left open in the proposal.

the proposal was withdrawn,¹² the question of terms was discussed during debate on the Cabinet issue.¹³ Because the commission ultimately adopted a provision abolishing the Cabinet,¹⁴ the issue of limiting terms of office did not resurface until Commissioners Matthews and D'Alemberte introduced an amendment to Proposal 258 to establish a limitation on terms.¹⁵ The amendment was adopted¹⁶ with little debate despite an assertion by Commissioner James that the amendment would be ineffective because a popular Cabinet officer would merely switch offices every eight years.¹⁷ It should be noted that the phrase "executive statewide elective office" was used to ensure that this provision would not apply to legislative or judicial officers.¹⁸

ARTICLE III

I. SECTION 2: MEMBERS; OFFICERS

The most significant change affecting section 2 would provide that the presiding officer of each house shall serve at the pleasure of the membership. There is no reference to removal of the leadership in the 1968 constitution. This issue was brought to the attention of the commission during the initial public hearings and was included in various forms in the summary of suggestions considered by the commission on September 27, 1977.¹ Although the commission failed to designate any of the suggested proposals for further consideration, the Legislative Committee considered a proposal providing for the "removal and succession of presiding officers."²

At some point during the committee's deliberations, reference to removal of officers was deleted, and the eventual committee proposal only covered succession of officers.³ However, Commissioner

12. 25 Fla. C.R.C. Jour. 356 (Jan. 27, 1978).

13. Transcript of Fla. C.R.C. proceedings 134-50 (Jan. 23, 1978).

14. Fla. C.R.C., Proposal 200, *adopted*, 23 Fla. C.R.C. Jour. 344 (Jan. 25, 1978).

15. 27 Fla. C.R.C. Jour. 528 (Mar. 7, 1978) (amend. 2). Proposal 258 includes the entire text of the proposed constitution.

16. *Id.*

17. Transcript of Fla. C.R.C. proceedings 141 (Mar. 7, 1978). This does indeed happen in other states. Alabama is one example.

18. *Id.* at 139.

1. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 12 (Sept. 27, 1977) (suggestions submitted by the public) [hereinafter cited as Suggestions].

2. Fla. C.R.C., Legislative Committee Revised Minutes 1 (Oct. 4, 1977).

3. Fla. C.R.C., Proposal 38.

Shevin introduced a proposal providing that the presiding officer of each house shall serve at the pleasure of the membership of such house.⁴ This proposal was adopted by the commission.⁵

It is interesting to note that the proposed change was adopted with very little debate.⁶ Some critics of the proposal argued that a constitutional change was unnecessary because the legislature could have provided for removal of the leadership by rule.⁷ But advocates of reform asserted that the word "permanent" modifying "presiding officer" in the 1968 constitution would have rendered such a rule unconstitutional.⁸

The new provision is silent as to whether it will be implemented by statute or by rule. It does not provide for a specific vote, and, thus, under the rules of construction prescribed by the constitution, a majority vote of those voting will be required.⁹

Another change in section 2 would provide for automatic succession of leadership: "Upon a vacancy in the office of a presiding officer, the president pro tempore or the speaker pro tempore, as the case may be, shall automatically succeed to the office."¹⁰

This was not among the suggestions originally considered by the commission. However, the Legislative Committee decided to consider a proposal providing for the succession of presiding officers.¹¹ The minutes reflect¹² that Commissioner Ryals¹³ made suggestions for the wording of the proposal; however, a motion to adopt his wording failed.¹⁴ Language suggested by Commissioner Brantley¹⁵ was adopted by the committee and introduced as a proposal.¹⁶

The language that Commissioner Ryals had suggested to the Legislative Committee provided that, upon a vacancy in the presiding office, the president pro tempore or the speaker pro tempore would automatically succeed to the office. The language adopted and introduced as a proposal by the committee provided for a spe-

4. Fla. C.R.C., Proposal 207.

5. See 20 Fla. C.R.C. Jour. 307-08 (Jan. 13, 1978).

6. See Transcript of Fla. C.R.C. proceedings 69 (Jan. 13, 1978).

7. *Id.* (remarks of Commissioner Shevin).

8. *Id.*; see Moore, *The Power Within* (pt. 1), 5 FLA. ST. U. L. REV. 603, 616 (1977).

9. FLA. CONST. art. X, § 12(e).

10. Fla. C.R.C., Rev. Fla. Const. art. III, § 2 (May 11, 1978).

11. See Fla. C.R.C., Legislative Committee Minutes 1 (Oct. 4, 1977).

12. *Id.* at 1 (Oct. 13, 1977).

13. Commissioner Ryals was speaker pro tempore at this time and had recently been faced with the possibility of having to fill the vacancy that would have been created by former House Speaker Don Tucker's appointment to the Civil Aeronautics Board. The anticipated appointment was never made.

14. Fla. C.R.C., Legislative Committee Minutes 3 (Oct. 20, 1977).

15. Then president of the senate.

16. Fla. C.R.C., Legislative Committee Minutes 3 (Oct. 20, 1977).

cial session of the affected house to elect a successor to serve the balance of the unexpired term.¹⁷ Commissioner Ryals introduced his suggested language as a proposal.¹⁸ When the commission considered the Legislative Committee proposal, Commissioner Ryals successfully offered an amendment striking the language of the committee proposal and inserting the language of his proposal.¹⁹ This amended proposal was adopted by the commission.²⁰ The Committee on Style and Drafting recommended changes in the wording of the proposal to make it conform to that of the rest of the constitution.²¹

It should be noted that the senate and house rules provide for the filling of a vacancy. The senate rules provide that if the chair is permanently vacated, the senate may designate a presiding officer.²² The house rules provide that in the event of an interim vacancy, the speaker pro tempore, or such other officers as are listed in section 11.15 (3), Florida Statutes, shall conduct the necessary business of the house.²³ There is no house rule on permanent vacancies. The change adopted by the commission reflects the procedure provided for in the house rules.

II. SECTION 3: SESSIONS OF THE LEGISLATURE

The only change recommended in section 3 is significant. It would alter the date of the regular legislative session: "(b) REGULAR SESSIONS. A regular session of the legislature shall convene on the second Tuesday in February of each year, unless otherwise provided by law." Under the 1968 constitution, the regular session of the legislature convenes in April in both odd-numbered years and even-numbered years, unless otherwise provided by law.²⁴

Various changes in the date of the regular session were suggested to the commission,²⁵ and some were designated for further study.²⁶ The Legislative Committee recommended that the regular session convene each year at such times as may be provided by law.²⁷ This

17. Fla. C.R.C., Proposal 38.

18. Fla. C.R.C., Proposal 56.

19. 7 Fla. C.R.C. Jour. 138 (Nov. 15, 1977).

20. *Id.*

21. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 16 (Mar. 6, 1978).

22. Fla. S. Rule 1.7(c) (1976-1978).

23. Fla. H.R. Rule 2.6 (as amended through June 8, 1977).

24. FLA. CONST. art. III, § 3(b).

25. Suggestions, *supra* note 1, at 12-13.

26. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 4 (Sept. 28, 1977) [hereinafter cited as List of 232].

27. Fla. C.R.C., Legislative Committee Minutes 2 (Oct. 13, 1977); Fla. C.R.C., Proposal 9.

proposal and six others²⁸ affecting the dates of the session were vigorously debated. The debate reflected the concern voiced by education interests that the April-June session does not allow schools to plan adequately for the fiscal year beginning July 1.²⁹

The Legislative Committee proposal was debated at length, amended, and adopted.³⁰ Following a motion to reconsider, it was further amended and adopted.³¹ When the commission reconvened two months later, however, a different proposal was debated and adopted.³² This proposal superseded the earlier one³³ and resulted in the language quoted above.

III. SECTION 4: QUORUM AND PROCEDURE

Substantial revisions have been proposed in subsection 4(d), which provides for discipline of members of the legislature. As amended, the new section would provide: "By a majority vote of its membership each house may discipline a member and, by a two-thirds vote of its membership, may expel a member. Upon the call of the presiding officer, either house shall convene for such purposes whether or not the other house is in session."

28. Fla. C.R.C., Proposals 17, 60, 145, 160, 212, 228. Proposal 17 by Commissioner Barkdull would have provided for a regular legislative session of not longer than 30 consecutive days in odd-numbered years to consider the general appropriations bill and related legislation, and not longer than 60 consecutive days in even-numbered years to consider any other legislative business. This proposal failed. 8 Fla. C.R.C. Jour. 163 (Nov. 16, 1977).

Proposal 60 by Commissioner Ausley would have provided for biennial legislative sessions convening in April. This proposal also failed. *Id.*

Proposal 145 by Commissioners Burkholz, DeGrove, and Mathews would have provided for a regular session in February of each year unless otherwise provided by law. This proposal was adopted. 18 Fla. C.R.C. Jour. 282 (Jan. 11, 1978).

Proposal 160 by Commissioner Mathews would have provided for a regular session in March of each year unless otherwise provided by law. On a motion by Commissioner Mathews, this proposal was withdrawn. 20 Fla. C.R.C. Jour. 312 (Jan. 13, 1978).

Proposal 212 by Commissioner Hollis would have provided for a regular session of not longer than 31 consecutive days in odd-numbered years to consider the general appropriations bill and related legislation, and not longer than 60 consecutive days in even-numbered years to consider any other legislative business. This proposal failed. *Id.* at 309.

Proposal 228 by Commissioner Barkdull would have provided for 45-day regular sessions to consider appropriations in odd-numbered years and general legislative business in even-numbered years. On Commissioner Ausley's motion, this proposal was withdrawn. 25 Fla. C.R.C. Jour. 353 (Jan. 27, 1978).

29. Transcript of Fla. C.R.C. proceedings 165-66 (Jan. 11, 1978) (remarks of Commissioner Burkholz).

30. 6 Fla. C.R.C. Jour. 129-31 (Nov. 14, 1977).

31. 7 Fla. C.R.C. Jour. 132 (Nov. 15, 1977).

32. Fla. C.R.C., Proposal 145; 18 Fla. C.R.C. Jour. 282 (Jan. 11, 1978).

33. Chairman D'Alemberte ruled on December 9, 1977, that subsequently introduced proposals overruled earlier proposals, if passed. Transcript of Fla. C.R.C. proceedings 39 (Dec. 9, 1977).

This proposal was not among those originally suggested to the commission. The commission agreed, however, to consider a revision to the section on impeachment³⁴ allowing the house to convene for consideration of an impeachment resolution without the senate's also being in session.³⁵ As a result, the Legislative Committee also decided to introduce a proposal allowing either house to convene for the purpose of punishing or expelling a member without the other house's being in session.³⁶ Although it was unclear from the 1968 constitution whether both houses needed to convene for such purposes, the prevailing view was that this was required.³⁷

The Legislative Committee proposal was amended during debate. The reference to "punish[ing]" a member "for contempt or disorderly conduct" was deleted, and the language quoted above providing for "discipline" of a member was added.³⁸ A majority vote of the membership would be required to discipline a member. The current provision has no specific required vote, so presumably a majority vote of those voting is required.³⁹ However, both the senate⁴⁰ and house rules⁴¹ require a two-thirds vote to discipline or expel a member for violating a rule regulating ethics and conduct. Thus, the rules are of questionable constitutionality under the 1968 constitution, and they would comply with the proposed change only with regard to expulsion.

IV. SECTION 7: PASSAGE OF BILLS

There were four proposals to revise section 7, but only one was approved.⁴² This would provide that the first reading of a bill may be accomplished by publication in the legislative journal. The 1968 constitution requires that a bill be read in each house on three separate days unless the rule is waived by a two-thirds vote.⁴³

Currently, the first reading of a bill is done by a clerk each day after the legislature has adjourned.⁴⁴ A reading may be by title only.

34. FLA. CONST. art. III, § 17.

35. List of 232, *supra* note 26, at 6.

36. Fla. C.R.C., Legislative Committee Minutes 1-2 (Oct. 20, 1977); Fla. C.R.C., Proposal 37.

37. Transcript of Fla. C.R.C. proceedings 145-46 (Nov. 15, 1977) (remarks of Commissioner James).

38. 7 Fla. C.R.C. Jour. 136 (Nov. 15, 1977).

39. See FLA. CONST. art. X, § 12(e).

40. Fla. S. Rule 1.42 (1976-1978).

41. Fla. H.R. Rule 5.14 (as amended through June 8, 1977).

42. Fla. C.R.C., Proposal 7.

43. FLA. CONST. art. III, § 7. See also Fla. S. Rule 4.12 (1976-1978); Fla. H.R. Rule 8.10 (as amended through June 8, 1977).

44. Transcript of Fla. C.R.C. proceedings 27 (July 6, 1977) (remarks of Don Tucker).

However, one-third of the members present may force a reading of the bill in its entirety.⁴⁵

The proposal to amend section 7 was on the original list of suggestions considered by the commission⁴⁶ and was designated for additional study.⁴⁷ The Legislative Committee introduced a proposal to accomplish the revision,⁴⁸ and the commission adopted the proposal as introduced.⁴⁹ The commission presumably intends this change to be a timesaving measure.

V. SECTION 8: EXECUTIVE APPROVAL AND VETO

The commission approved changes in subsections (a) and (c) of section 8. The change in subsection (a) would extend from fifteen to thirty days the time for the Governor to veto or otherwise act on a bill presented to him if the legislature adjourns or recesses within seven days after presentation. This recommendation was not among the original proposals considered by the commission, nor was it considered by the Legislative Committee. A proposal introduced by Commissioner Apthorp⁵⁰ was amended on the floor to accomplish the change⁵¹ and was adopted by the commission.⁵²

The change in subsection (c) would provide that any attempt to override a vetoed bill or appropriation must occur during the next regular session following the session in which the bill or appropriation was passed. It is unclear under the 1968 constitution when the legislature must act on a vetoed bill.⁵³ A suggestion to accomplish this change was on the original proposal list presented to the commission,⁵⁴ but the issue was not earmarked for further study.⁵⁵ However, the Legislative Committee introduced a proposal to accom-

45. D'Alemberte, *Commentary*, in 25A FLA. STAT. ANN. 659-60 (West 1970).

46. Suggestions, *supra* note 1, at 14.

47. List of 232, *supra* note 26, at 4.

48. Fla. C.R.C., Legislative Committee Minutes 2 (Oct. 13, 1977).

49. 7 Fla. C.R.C. Jour. 133 (Nov. 15, 1977).

50. Fla. C.R.C., Proposal 79. Commissioner Apthorp, a gubernatorial appointee who had served as an aide to Governor Askew, was particularly concerned with the problems arising at the end of each session. "I can recall following one session of the legislature . . . [w]e received in excess of 200 bills to be processed. And we found it virtually impossible to deal with that many [bills] in the 15-day period." Transcript of Fla. C.R.C. proceedings 132 (Nov. 16, 1977).

51. For the text of the amendment, see 8 Fla. C.R.C. Jour. 165 (Nov. 16, 1977).

52. *Id.*

53. Transcript of Fla. C.R.C. proceedings 27 (July 6, 1977) (remarks of Don Tucker).

54. Suggestions, *supra* note 1, at 15.

55. See List of 232, *supra* note 26, at 5.

plish the change,⁵⁶ which the commission adopted with amendments.⁵⁷

VI. SECTION 11: PROHIBITED SPECIAL LAWS

The commission approved one change in section 11. Subsection (a)(15), which prohibits special laws pertaining to "divorce," was modified to read "dissolution of marriage." This change was on the original list of issues presented to the commission,⁵⁸ was approved for further study,⁵⁹ and was introduced as a proposal by the Legislative Committee.⁶⁰ The proposal was explained as a technical amendment offered only to conform the constitutional language to the terminology of current statutes.⁶¹ The proposal was adopted without amendments.⁶²

VII. SECTION 13: TERM OF OFFICE

The commission proposed a minor change in this section. Public service commissioners would be exempted from the four-year-term limitation, provided their terms may not exceed six years. This change was originally in the schedule to article IV, section 10,⁶³ relating to the Public Service Commission, but was moved to article III by the Committee on Style and Drafting because it dealt with substantive matters.⁶⁴

VIII. SECTION 15: TERMS AND QUALIFICATIONS OF LEGISLATORS

A minor change in subsection (a) is proposed. It would provide that following a reapportionment, "*one half of the* senators shall be elected for [two-year terms if] necessary to maintain staggered terms." Currently, there is a provision for "some" senators to be elected for two-year terms. The Committee on Style and Drafting

56. Fla. C.R.C., Legislative Committee Minutes 4 (Oct. 20, 1977); Fla. C.R.C., Proposal 42.

57. 7 Fla. C.R.C. Jour. 134 (Nov. 15, 1977).

58. Suggestions, *supra* note 1, at 16.

59. List of 232, *supra* note 26, at 5.

60. Fla. C.R.C., Proposal 5; Fla. C.R.C., Legislative Committee Minutes 3 (Oct. 4, 1977); *id.* at 3 (Oct. 13, 1977).

61. Transcript of Fla. C.R.C. proceedings 112 (Nov. 15, 1977).

62. 7 Fla. C.R.C. Jour. 134 (Nov. 15, 1977).

63. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 43 (Mar. 6, 1978).

64. 33 Fla. C.R.C. Jour. 581 (May 5, 1978) (amend. 3).

proposed the change⁶⁵ and explained it as being necessary for consistency.⁶⁶

Subsection (c) providing for qualifications of legislators, was altered by the commission. The change would lower the qualifying age for legislators from twenty-one to eighteen. This issue was included in the original list of issues considered by the commission⁶⁷ and received the requisite number of votes for further consideration.⁶⁸ The Legislative Committee introduced a proposal to accomplish this change.⁶⁹ The proposal was adopted with little debate.⁷⁰

The Committee on Style and Drafting recommended deletion of the word "eighteen" because legislators are already required to be "electors," who must be eighteen years old.⁷¹ The proposed subsection provides that "[e]ach legislator shall be an elector and resident of the district from which elected"

IX. SECTION 16: REAPPORTIONMENT

Section 16, which pertains to reapportionment, would be dramatically altered by the proposed revision. The proposed section would require that all legislative districts be single-member districts and would establish reapportionment standards as well as a commission to prepare an apportionment plan. Currently, section 16 requires the legislature to apportion the state every ten years

in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory.⁷²

Since 1962, when the United States Supreme Court ruled in *Baker v. Carr*⁷³ that legislative reapportionment was a justiciable

65. 26 Fla. C.R.C. Jour. 522 (Mar. 6, 1978) (amend. 3).

66. Transcript of Fla. C.R.C. proceedings 131 (Mar. 6, 1978) (remarks of Commissioner Mathews).

67. Suggestions, *supra* note 1, at 18.

68. List of 232, *supra* note 26, at 6.

69. Fla. C.R.C., Proposal 11. For discussion of the proposal, see Fla. C.R.C., Legislative Committee Minutes 2-3 (Oct. 13, 1977).

70. 7 Fla. C.R.C. Jour. 134-35 (Nov. 15, 1977); see Transcript of Fla. C.R.C. proceedings 113-15 (Nov. 15, 1977).

71. See Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 25 (Mar. 6, 1978).

72. FLA. CONST. art. III, § 16(a).

73. 369 U.S. 186 (1962).

controversy, the concept of single-member districts has attracted much attention.⁷⁴ Although the United States Supreme Court has not ruled that multimember districts are unconstitutional per se,⁷⁵ it has stated a general preference for single-member districts.⁷⁶ In 1972, the Florida Legislature adopted a reapportionment plan⁷⁷ calling for variable multimember districts.⁷⁸ The Florida Supreme Court, in upholding the plan, stated that the language in article III, section 16(a)—providing that the districts may be “identical territory”⁷⁹—implied that multimember districts are permissible.⁸⁰

Previous attempts to amend the Florida Constitution to provide for single-member districts have failed. The issue was debated before the 1965 Florida Constitution Revision Commission without result.⁸¹ During the 1976 legislative session, a measure requiring single-member districts passed the house but died in the senate.⁸² Many accurately predicted that the issue would be debated fully before the 1978 revision commission.⁸³

Numerous suggestions to change the current reapportionment scheme were considered by the commission.⁸⁴ The Legislative Com-

74. For a detailed analysis of legislative districting with special emphasis on Florida, see Note, *Multi-Member Legislative Districts: Requiem for a Constitutional Burial*, 29 U. FLA. L. REV. 703 (1977).

75. See, e.g., *White v. Regester*, 412 U.S. 755, 765 (1973); *Whitcomb v. Chavis*, 403 U.S. 124, 142 (1971).

76. See *Chapman v. Meyer*, 420 U.S. 1, 15-16 (1975).

The Court gave three reasons for disfavoring multimember districts:

First, as the number of legislative seats within the district increases, the difficulty for the voter in making intelligent choices among candidates also increases. . . . Ballots tend to become unwieldy, confusing, and too lengthy to allow thoughtful consideration. Second, when candidates are elected at large, residents of particular areas within the district may feel that they have no representative specially responsible to them. . . . Third, it is possible that bloc voting by delegates from a multimember district may result in undue representation of residents of these districts relative to voters in single-member districts.

Id. (citations omitted).

77. Fla. SJR 1305, 1972 Fla. Laws 1633.

78. SJR 1305, § 2(2) established multimember districts for densely populated counties, and § 2(3) provided for single-member districts for rural counties.

79. FLA. CONST. art. III, § 16(a).

80. *In re Apportionment Law*, 263 So. 2d 797, 806-07 (Fla. 1972). See also *Milton v. Smathers*, 351 So. 2d 24 (Fla. 1977). In this case the plaintiffs petitioned the supreme court to declare SJR 1305 unconstitutional as applied to house districts 57-61 and, furthermore, to declare the entire joint resolution unconstitutional. The court declined to consider the latter request but assigned a special master to consider the constitutionality of the apportionment of house districts 57-61. The case was still pending in early August, 1978.

81. Transcript of 1965 Fla. C.R.C. proceedings 381 *et seq.* (Nov. 29, 1966).

82. Fla. HJR 801 (1976). The vote in the house was 82-33. FLA. H.R. JOUR. 547 (Reg. Sess. 1976).

83. Transcript of Fla. C.R.C. proceedings 42 (July 6, 1977) (remarks of Chesterfield Smith).

84. Suggestions, *supra* note 1, at 18-19.

mittee sponsored a proposal requiring that all legislative districts be single-member.⁸⁵ Various amendments advocating different approaches to apportionment—such as single-member districts for the house and multimember districts for the senate—were offered, but all were defeated.⁸⁶ The proposal was adopted as introduced.⁸⁷

Debate on the issue was heated, most commissioners having a strong commitment to one position or another. Commissioner James, chairman of the Legislative Committee and minority leader of the house of representatives, was the floor manager of the single-member district proposal. He urged commissioners to "[f]orget about races and creeds and political persuasions. Think about government working for a change for the people . . . I am concerned that the people return and have a voice in their government."⁸⁸ Interestingly, Commissioner Plante, the senate minority leader, took the opposite view. He argued that single-member districts lead to parochialism:

You narrow the view of the elected official when you narrow the base of his support and the area he has got to be concerned about. Single-member district sounds wonderful. It is close representation, down with the people. Let the people be represented by that one single person. Aren't you electing a very narrow-minded representative when you have him in a small area of 65,000 — 60,000 people? All he has got to worry about is his one small area that has no agriculture, no industry, maybe no tourism, no waterways.⁸⁹

Perhaps the most innovative change being proposed to the electors in November is the creation of a nonpartisan commission which would be responsible for reapportionment. This provision is based on a model constitutional amendment drafted by Common Cause, a national citizens' lobbying group.⁹⁰ The commission would have seven members. Six members would be appointed by the Governor, one member of his own choice and one each from lists submitted by the president of the senate, speaker of the house, minority leaders of the house and senate, and the chairman of the party that fin-

85. Fla. C.R.C., Proposal 10.

86. 7 Fla. C.R.C. Jour. 152-54 (Nov. 15, 1977). Proposals 18 and 226, reducing the size of the legislature, were debated but also failed. 8 Fla. C.R.C. Jour. 165-66 (Nov. 16, 1977); 25 Fla. C.R.C. Jour. 355 (Jan. 27, 1978).

87. 7 Fla. C.R.C. Jour. 152-54 (Nov. 15, 1977). Proposal 84, giving the supreme court 60 days rather than 30 to review reapportionment plans, was also approved. 9 Fla. C.R.C. Jour. 173 (Nov. 17, 1977).

88. Transcript of Fla. C.R.C. proceedings 316 (Nov. 15, 1977) (remarks of Commissioner James).

89. *Id.* at 352 (remarks of Commissioner Plante).

ished second in the previous gubernatorial election. The seventh member would be chosen by the other six and would be the chairman.

The commission would be required to follow standards designed to make each district as equal in population as practicable, as compatible with political boundaries as possible, compact in form, equitable to all electors, without diluting the voting strength of any language or racial minority group. The standards are very specific, most even setting forth permissible variations.⁹¹

Although the creation of a bipartisan group to reapportion the legislature was among the suggestions considered by the revision commission,⁹² it did not receive sufficient support for further study. After the single-member district provision was adopted, Commissioner Jon Moyle, former chairman of the Florida Democratic Party, and twenty-two other commissioners sponsored the reapportionment commission proposal.⁹³ Surprisingly, it was adopted with virtually no debate and only one dissenting vote.⁹⁴ Many amendments of a technical nature were recommended by the Committee on Style and Drafting and were adopted by the commission.⁹⁵

Reapportionment has long been a controversial issue in Florida.⁹⁶ Many legislative sessions have been devoted to consideration of the issue, and numerous challenges to the resulting plans have been filed in court.⁹⁷ A bipartisan reapportionment commission operating under strict standards should alleviate many of the problems inherent in the legislature's reapportioning itself. In 1958, one commentator observed that "[v]oting for a fair apportionment bill would in

90. See Adams, *A Model State Reapportionment Process: The Continuing Quest for "Fair and Effective Representation,"* 14 HARV. J. LEGIS. 825 (1977).

91. A suit for declaratory and injunctive relief was filed in circuit court, challenging Revision Number 3 and asserting that the standards mandated in proposed art. III, § 16(c)(1) are "mathematically impossible." The plaintiffs asked the court to declare Revision Number 3 invalid and to delete it from the November ballot. The court granted the defendant's motion for summary judgment, denying the plaintiffs any injunctive relief and declaring that proposed Revision Number 3, as construed by the court, would be a rational amendment to the constitution. *Mallue v. Department of State*, No. 78-1347 (Fla. 2d Cir. Ct. Aug. 3, 1978).

92. Suggestions, *supra* note 1, at 18-19.

93. Fla. C.R.C., Proposal 195.

94. 19 Fla. C.R.C. Jour. 285 (Jan. 12, 1978). The lack of debate is considered a problem by the Florida director of Common Cause because it produced no legislative history to reveal the commission's intent should any provisions need clarification. A recent newspaper article reporting that the reapportionment commission will apparently have the power to reduce the size of the legislature, an issue not discussed at the time of passage, prompted these remarks. *St. Petersburg Times*, May 28, 1978, § D, at 3.

95. See Fla. C.R.C. Final Summary of Action Taken on all Commission Proposals and Amendments (June 22, 1978).

96. See, e.g., W. HAVARD & L. BETH, *THE POLITICS OF MIS-REPRESENTATION* (1962).

97. See generally Dauer, *Florida Reapportionment*, 3 BUS. & ECON. DIMENSIONS 8 (1967).

many cases mean voting oneself out of office. That is too much to ask of most politicians."⁹⁸

X. SECTION 17: IMPEACHMENT

The commission has proposed six changes in section 17. The first change in subsection (a), pertaining to state officers liable to impeachment, would delete the words "members of the cabinet" and insert "statewide elected constitutional officers." This was not among the issues initially considered by the commission but was accomplished by an amendment to another proposal which the commission adopted.⁹⁹ The debate reflects that the purpose of the amendment was to ensure conformity of the proposal in the event the Cabinet is abolished.¹⁰⁰

Another change in subsection (a) would make judges of county courts liable to impeachment. Currently, county judges are subject only to suspension by the Governor.¹⁰¹ This change was included in the list of suggestions initially considered by the commission,¹⁰² was approved for further study,¹⁰³ and was introduced by the Legislative Committee as a proposal.¹⁰⁴ The debate reflects that the major purpose of the proposal was to provide equal treatment with respect to impeachment for county and circuit court judges.¹⁰⁵ The commission adopted the proposal with amendments.¹⁰⁶

Another provision of subsection (a) would allow the house to convene for purposes of considering an impeachment without the senate's being in session.¹⁰⁷ This proposal conforms to proposed changes in article III, section 4. The change was included in the list of suggestions originally considered by the commission,¹⁰⁸ was ap-

98. Lewis, *Legislative Apportionment and the Federal Courts*, 71 HARV. L. REV. 1057, 1091 (1958).

99. Fla. C.R.C., amendment 2 to Proposal 44, 7 Fla. C.R.C. Jour. 137 (Nov. 15, 1977), further amended and adopted, 9 Fla. C.R.C. Jour. 176 (Nov. 17, 1977). For a comprehensive discussion of impeachment in Florida, see Karl & Davis, *Impeachment in Florida*, 6 FLA. ST. U.L. REV. 1 (1978).

100. Transcript of Fla. C.R.C. proceedings 175-79 (Nov. 15, 1977).

101. See Cooper, *The Proposed Revision to the Executive Suspension Powers of the Governor*, *supra* this issue.

102. Suggestions, *supra* note 1, at addendum.

103. List of 232, *supra* note 26, at 7.

104. Fla. C.R.C., Proposal 44. The Legislative Committee minutes reflect the favorable treatment of the proposal. See Fla. C.R.C., Legislative Committee Minutes 4 (Oct. 4, 1977); *id.* at 2 (Oct. 20, 1977).

105. Transcript of Fla. C.R.C. proceedings 175-79 (Nov. 15, 1977) (remarks of Commissioner James).

106. 7 Fla. C.R.C. Jour. 137 (Nov. 15, 1977), further amended and adopted, 9 Fla. C.R.C. Jour. 176 (Nov. 17, 1977).

107. Fla. C.R.C., Proposal 41.

108. Suggestions, *supra* note 1, at 19.

proved for further study,¹⁰⁹ and was adopted by the commission.¹¹⁰

Still another change in this subsection would increase the number of votes needed to impeach or convict to two-thirds of the membership of the house. The 1968 constitution does not specify "membership," and thus a two-thirds vote of the legislators voting would be sufficient to impeach or convict.¹¹¹ This change was on the initial list of suggestions¹¹² but was not earmarked for further study. The issue was revived in the Legislative Committee,¹¹³ which introduced a proposal that eventually was adopted by the full commission.¹¹⁴

A major change was also suggested in subsection (c), pertaining to impeachment trials. The chief justice of the supreme court would be prohibited from presiding over impeachment trials of other justices. The requirement that the Governor preside over an impeachment trial of the chief justice also would be deleted. Provision would be made by law for a judicial officer other than a justice to preside over an impeachment trial involving a justice. This provision was included in the original list of issues considered by the commission,¹¹⁵ was favorably reported out of the Legislative Committee,¹¹⁶ and was adopted by the full commission with amendments.¹¹⁷

XI. SECTION 19: REVIEW OF RULES

The commission has proposed a new section which would provide for legislative review of administrative rules. This issue originally surfaced in 1976 in the form of a proposed constitutional amendment.¹¹⁸ The amendment was defeated,¹¹⁹ but the issue arose again before the revision commission. The new provision would allow the legislature to establish a joint legislative committee which could seek judicial review of administrative rules believed to exceed dele-

109. List of 232, *supra* note 26, at 6.

110. 7 Fla. C.R.C. Jour. 137 (Nov. 15, 1977).

111. See FLA. CONST. art. X, § 12(e).

112. Suggestions, *supra* note 1, at 19.

113. Fla. C.R.C., Legislative Committee Minutes 1 (Oct. 20, 1977).

114. Fla. C.R.C., Proposal 44, *adopted with amendments*, 7 Fla. C.R.C. Jour. 137 (Nov. 15, 1977).

115. Suggestions, *supra* note 1, at 19.

116. Fla. C.R.C., Legislative Committee Minutes 2 (Oct. 20, 1977).

117. Fla. C.R.C., Proposal 45, *adopted with amendments*, 7 Fla. C.R.C. Jour. 137 (Nov. 15, 1977).

118. Fla. CS/SJR 619 and 1398 (1976). For a thorough analysis of this issue, see Note, *Legislative Efforts To Amend The Florida Constitution: The Implications of Smathers v. Smith*, 5 FLA. ST. U.L. REV. 747 (1977).

119. The final vote was 729,400 "for" and 1,210,001 "against." Florida Dep't of State, Division of Elections, Tabulation of Official Votes: Florida General Election, Nov. 2, 1976.

gated authority. The supreme court would review the rule in an expedited proceeding.

This proposed new section caused considerable controversy in the revision commission. The original proposal¹²⁰ was introduced by Commissioner Ware, a state senator who had supported the 1976 constitutional amendment. The Ware proposal was adopted.¹²¹ Similar proposals were also introduced,¹²² and a select committee was appointed to study the matter.¹²³ The committee sponsored a compromise proposal¹²⁴ which was adopted.¹²⁵

Still not satisfied with the final product, Commissioners Birchfield and Barkdull introduced yet another proposal which was similar to Commissioner Ware's original proposal.¹²⁶ Their proposal was amended and adopted.¹²⁷ Technical changes offered by the Committee on Style and Drafting were adopted.¹²⁸

XII. SECTION 20: AUDITOR GENERAL

The provision establishing an office of auditor general is located in article III, section 2 of the 1968 constitution. It provides that the "legislature shall appoint an auditor . . . who shall audit public records and perform related duties as prescribed by law or concurrent resolution." Under the proposed revision a new section 20 would provide that the legislature, by majority vote, "shall appoint an independent auditor general who shall be a certified public accountant licensed to practice in this state and have such other qualifications as are prescribed by law."¹²⁹

This seemingly innocuous section was the subject of vigorous debate, mainly between Commissioner Collins,¹³⁰ who advocated the need for post-performance audit programs, and Commissioners

120. Fla. C.R.C., Proposal 61. For a detailed history of the revision commission's actions, see Note, *supra* note 118, at 798 n.294.

121. 8 Fla. C.R.C. Jour. 166 (Nov. 16, 1977).

122. Fla. C.R.C., Proposals 103, 131.

123. Members of the select committee were Commissioners Ware (chairman), D. Reed, Apthorp, Mathews, and Moyle. 12 Fla. C.R.C. Jour. 209 (Dec. 6, 1977).

124. Fla. C.R.C., Proposal 161.

125. 16 Fla. C.R.C. Jour. 258 (Jan. 9, 1978).

126. Fla. C.R.C., Proposal 211.

127. 24 Fla. C.R.C. Jour. 350 (Jan. 26, 1978).

128. See Fla. C.R.C., Final Summary of Action Taken on All Commission Proposals and Amendments (June 22, 1978).

129. Fla. C.R.C., Rev. Fla. Const. art. III, § 20 (May 11, 1978).

130. Commissioner Collins, a former Governor, argued that the people want performance auditing "because they want to stop this growth of bureaucracy in this state and to save money and think in terms of government being for the benefit of the people and not for the benefit of those doing the governing." Transcript of Fla. C.R.C. proceedings 152 (Nov. 22, 1977).

Ryals, James, and Brantley,¹³¹ who argued against putting such a requirement in the constitution.

Commissioner Collins asserted that post-performance auditing would retard the growth of the bureaucracy: "[T]he performance audit not only tells where the dollars come and how they go, but it tells how efficiently a public need is met and how it may be met more efficiently," and thus, the legislature has a sound basis for determining its priorities.¹³² Commissioners Ryals, James, and Brantley repeatedly countered that such a provision would actually increase the bureaucracy because of the high cost of performance auditing. They also argued for legislative flexibility to provide for whatever type of audit the legislature feels is necessary.¹³³

The latter group of commissioners prevailed, but only after lengthy debate.¹³⁴

ARTICLE IV

I. SECTION 1: GOVERNOR

The commission proposes two changes in section 1, which pertains to the Governor's duties. Subsection (a) would be amended to provide that the Governor is the chief law enforcement officer of the state.

In addition, a new subsection (g) would provide that the fiduciary duties associated with trust and agency fund investments, the management of bond debt servicing, and the acquisition and disposition of state lands would be the responsibility of the Governor and at least one officer prescribed by law. This new subsection, which is part of the proposed Cabinet revision, will be incorporated into section one only if the electors also approve Revision Number Four, which would abolish the Cabinet.¹ The new subsection would ensure

131. All three commissioners are legislators. Commissioners Ryals and James represent the 63d and 80th districts respectively in the Florida House of Representatives. Commissioner Brantley represents the 8th district in the Florida Senate.

132. Transcript of Fla. C.R.C. proceedings 151-52 (Nov. 22, 1977).

133. "What you are going to do, if you put this in the constitution, it says he has not only to postaudit, but to have performance audits. You are immediately going to grow [sic] the government." *Id.* at 141 (remarks of Commissioner Brantley).

134. 24 Fla. C.R.C. Jour. 348 (Jan. 26, 1978). The chairman ruled that Proposal 229 would displace Proposal 69, which had been adopted previously. 11 Fla. C.R.C. Jour. 200 (Nov. 22, 1977); see Transcript of Fla. C.R.C. proceedings 118-19 (Jan. 26, 1978).

1. Fla. C.R.C., Rev. Fla. Const., Ballot Packages & Ballot Language, Revision No. 4 (May 11, 1978), 33 Fla. C.R.C. Jour. app. (May 5, 1978).

that, in the event the Cabinet is abolished, the Governor will perform these specified duties with at least one other person—who will be a check on the Governor.² The details would be left to the legislature.

A suggestion to make the Governor the chief law enforcement officer was among those initially considered by the commission³ and was designated for further study.⁴ The Executive Committee introduced a proposal to accomplish the change.⁵ The commission adopted the proposal without debate.⁶

During the commission's last days of deliberation, Commissioner Barkdull introduced a proposal to add a subsection 1(g).⁷ The proposal specified that it would not be effective unless the proposal to abolish the Cabinet is approved by the electors.⁸ Commissioner Barkdull's proposal was adopted by the commission⁹ and was placed in section 1 by the Committee on Style and Drafting.¹⁰

II. SECTION 3: SUCCESSION TO OFFICE OF GOVERNOR

Section 3, which establishes the procedure for filling a vacancy in the office of Governor, would be changed in anticipation of the abolition of the Cabinet. Currently, four members of the Cabinet may file with the supreme court a written suggestion that the Governor is incapable of serving. This procedure would be abolished and new language would be added allowing the legislature to prescribe the manner in which incapacity will be certified to the supreme court. This provision would become effective only if Revision Number Four, which eliminates the Cabinet, is approved by the electors.¹¹ An additional method of establishing the Governor's incapacity to serve would also be established. It would allow the Governor to file a certificate of incapacity with an officer prescribed by law. Currently the certificate is filed with the secretary of state.

2. Transcript of Fla. C.R.C. proceedings 8 (Apr. 15, 1978).

3. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 27 (Sept. 27, 1977) (suggestions submitted by the public) [hereinafter cited as *Suggestions*].

4. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 10 (Sept. 28, 1977) [hereinafter cited as *List of 232*].

5. Fla. C.R.C., Proposal 57.

6. 17 Fla. C.R.C. Jour. 263 (Jan. 10, 1978).

7. Fla. C.R.C., Proposal 259.

8. See schedule to Proposal 259, 31 Fla. C.R.C. Jour. 571 (Apr. 15, 1978).

9. 31 Fla. C.R.C. Jour. 571 (Apr. 15, 1978). The Committee on Style and Drafting deleted the schedule as unnecessary because § 1(a) would be balloted with Revision No. 4. See 33 Fla. C.R.C. Jour. 581 (May 5, 1978) (amend. 5).

10. 32 Fla. C.R.C. Jour. 573 (Apr. 21, 1978) (amend. 3).

11. Fla. C.R.C., Rev. Fla. Const., Ballot Packages & Ballot Language, Revision No. 4 (May 11, 1978), 33 Fla. C.R.C. Jour. app. (May 5, 1978).

The proposed change was originally in the schedule accompanying the Cabinet provisions.¹² A recommendation by the Committee on Style and Drafting to move the change to section 3 but ballot it with Revision Number Four, the Cabinet revision, was adopted by the commission.¹³

III. SECTION 4: CABINET

Section 4, which established the Cabinet, has been deleted. For a discussion of this unique form of government, see Johnson, *Why We Should Keep Florida's Elected Cabinet*, *supra* this issue, and Moyle, *Why We Should Abolish Florida's Elected Cabinet*, *supra* this issue.

IV. SECTION 7: SUSPENSIONS

This section would be amended substantially to provide for uniform grounds for removal of all officers and for a procedure whereby state officers may remove themselves from office. For a comprehensive analysis of this section, see Cooper, *The Proposed Revision to the Executive Suspension Powers of the Governor*, *supra* this issue.

V. SECTION 8: CLEMENCY

There are three proposed changes in the section on clemency. Currently, three Cabinet members must approve a grant of clemency by the Governor. This requirement would be deleted if the Cabinet is abolished, and the authority to grant clemency would be vested exclusively in the Governor.

The Committee on Style and Drafting suggested this change by an amendment.¹⁴ The change will be included in Revision Number Four, which would abolish the Cabinet, and will become effective only if this revision is approved by the people.¹⁵

Subsection (b), which pertains to the clemency powers of the Governor and legislature with respect to the crime of treason, would be deleted to conform to the proposed elimination of the treason provision in article I, section 20.¹⁶

Subsection (b)—formerly (c)—would be changed to delete the

12. 30 Fla. C.R.C. Jour. 556-57 (Apr. 14, 1978); see Proposal 258, as amended Apr. 14-15, 1978.

13. 33 Fla. C.R.C. Jour. 581-82 (May 5, 1978).

14. *Id.* at 581 (amend. 9).

15. Fla. C.R.C., Rev. Fla. Const., Ballot Packages & Ballot Language, Revision No. 4 (May 11, 1978), 33 Fla. C.R.C. Jour. app. (May 5, 1978).

16. See Dore, *Of Rights Lost and Gained*, *supra* this issue.

reference to the probation function of the Parole and Probation Commission. New language also would be added to ensure that the commission would operate only under procedures established by the legislature.¹⁷

This change was among the initial suggestions made to the commission¹⁸ and was designated for further study.¹⁹ The Executive Committee introduced a proposal to delete this subsection.²⁰ The proposal, however, was amended to delete only the parole commission's power over probation.²¹ The proposal was amended further to provide that commission procedures would be prescribed by law. This amended proposal was adopted.²² The Committee on Style and Drafting recommended a technical change which was adopted.²³

VI. SECTION 10: PUBLIC SERVICE COMMISSION

The commission proposes to add a new section creating a five-member, appointed Public Service Commission. The legislature would establish a nominating commission which would recommend at least three persons to the Governor for each vacancy. The senate would have to confirm the Governor's choice. The section would further prescribe that the legislature would establish the qualifications of members of the commission, presumably professional qualifications, as well as residency requirements. The legislature would also prescribe the powers, duties, and administrative procedures of the commission as well as what entities the commission would regulate. An appointed public counsel would represent the people of Florida in proceedings before the commission. Judicial review of commission actions would be in the supreme court by certiorari. Interestingly, the proposed schedule states that the new section will be deemed to be deleted from the constitution in ten years and will then become a general law.

At the time this proposal was adopted, the Public Service Commission (PSC) was an elected, three-member body.²⁴ However, the

17. Transcript of Fla. C.R.C. proceedings 190-91 (Jan. 12, 1978) (remarks of Commissioner Burkholz).

18. Suggestions, *supra* note 3, at 27.

19. List of 232, *supra* note 4, at 10.

20. Fla. C.R.C., Proposal 106.

21. 17 Fla. C.R.C. Jour. 264 (Jan. 10, 1978) (amend. 1). The amendment was adopted, but the proposal failed. A motion to reconsider the proposal was adopted. 19 Fla. C.R.C. Jour. 289 (Jan. 12, 1978). The proposal was reconsidered and adopted, retaining amendment 1 by Commissioner Shevin. *Id.* at 290.

22. 19 Fla. C.R.C. Jour. 290 (Jan. 12, 1978) (amend. 1B).

23. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 41 (Mar. 6, 1978), adopted, 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978).

24. FLA. STAT. § 350.01 (1977).

1978 legislature approved a bill making the body appointive,²⁵ which was signed into law by the Governor.²⁶ The new law establishes a nine-member nominating council: three members appointed by the speaker of the house, three members appointed by the president of the senate, and three members selected and appointed by a majority vote of the other six members.²⁷ The law also provides that no nominee shall be recommended to the Governor unless knowledgeable in one or more fields including, but not limited to, "public affairs, law, economics, accounting, engineering, finance, natural resource conservation [and] energy."²⁸ It further provides that the Public Service Commission "shall fairly represent the above-stated fields."²⁹

Numerous suggestions to change the PSC to an appointed body were among the recommendations initially made to the revision commission.³⁰ Some were earmarked for additional study.³¹ The Executive Committee introduced a proposal incorporating most of the suggestions.³² It was debated at great length by the full commission,³³ resulting in several suggested amendments.³⁴ One amendment requiring that municipally operated utilities be regulated by the PSC created considerable controversy but ultimately was not adopted.³⁵ The concept of a nominating commission failed upon original consideration but was eventually adopted.³⁶

The Committee on Style and Drafting recommended numerous changes, some involving technical changes and others concerning the schedule, all of which were adopted.³⁷

VII. SECTION 11: DEPARTMENT OF HEALTH

The commission proposes to add a new section establishing a department of health. The department would be responsible for the

25. Fla. SB 7-D (1978).

26. Ch. 78-426, 1978 Fla. Laws ____.

27. *Id.* § 3 (to be codified at FLA. STAT. § 350.031(1)).

28. *Id.* (to be codified at FLA. STAT. § 350.031(6)).

29. *Id.*

30. Suggestions, *supra* note 3, at 28-29.

31. List of 232, *supra* note 4, at 10-11.

32. Fla. C.R.C., Proposal 99.

33. Transcript of Fla. C.R.C. proceedings 5-106 (Nov. 22, 1977).

34. 11 Fla. C.R.C. Jour. 197-99 (Nov. 22, 1977). Nine amendments were offered; six were adopted.

35. *Adopted*, 11 Fla. C.R.C. Jour. 198 (Nov. 22, 1977) (amend. 7 as amended by amend. 7A), *reconsidered and failed*, 12 Fla. C.R.C. Jour. 210 (Dec. 6, 1977).

36. Fla. C.R.C., Proposal 179, *failed*, 19 Fla. C.R.C. Jour. 287 (Jan. 12, 1978), *adopted*, 32 Fla. C.R.C. Jour. 578-79 (Apr. 21, 1978) (amend. B).

37. See Fla. C.R.C., Final Summary of Action Taken on All Commission Proposals and Amendments, art. IV, § 10 and art. IV, § 10 Schedule (June 22, 1978).

promotion and protection of public health in Florida. It would be headed by a physician trained in public health who would be appointed by the Governor and confirmed by the senate. The legislature would implement this section, which would become effective on July 1, 1979.

Currently, the Department of Health and Rehabilitative Services (HRS) is responsible for public health.³⁸ Dissatisfaction with the alleged low priority given public health by HRS provided the impetus for this change.³⁹ Advocates of a separate health department argued that public health is especially important to Florida because of its dependence on tourism.⁴⁰

The issue of a separate department of health was among the initial suggestions to the commission⁴¹ and was designated for further study.⁴² The Executive Committee introduced two proposals on the issue, one providing for a Cabinet-level department and one creating a state public health officer.⁴³ However, Commissioner Annis, a physician,⁴⁴ sponsored the proposal that was ultimately adopted.⁴⁵ The Annis proposal originally provided merely for a department of health headed by a physician. When the proposal was introduced, Commissioner Annis successfully offered an amendment specifying the department's functions as well as the legislative responsibility for implementation. This amended proposal was adopted.⁴⁶ Commissioner D'Alemberte later offered an amendment striking the separate department and providing for a chief public health officer, but that amendment was defeated.⁴⁷ An amendment providing for implementation was recommended by the Committee on Style and Drafting, was amended, and was ultimately adopted.⁴⁸

38. FLA. STAT. § 20.19(3)(c)2.c., ch. 381 (1977).

39. Transcript of Fla. C.R.C. proceedings 23-25 (Jan. 25, 1978) (remarks of Commissioner Annis).

40. *Id.* at 11-13.

41. Suggestions, *supra* note 3, at 24 and addendum.

42. List of 232, *supra* note 4, at 9.

43. Fla. C.R.C., Proposals 102, 126. Neither proposal was debated on the floor, and both were withdrawn upon adoption of Proposal 123. 23 Fla. C.R.C. Jour. 340 (Jan. 25, 1978).

44. Commissioner Annis is a former president of the American Medical Association and the World Medical Association. See Transcript of Fla. C.R.C. proceedings 11 (July 6, 1977) (remarks of Commissioner Brantley).

45. Fla. C.R.C., Proposal 123.

46. 23 Fla. C.R.C. Jour. 340 (Jan. 25, 1978).

47. 27 Fla. C.R.C. Jour. 532 (Mar. 7, 1978) (amend. 7).

48. 30 Fla. C.R.C. Jour. 562-63 (Apr. 14, 1978) (amend. 77, as amended by amend. 77A). See also 32 Fla. C.R.C. Jour. 574 (Apr. 21, 1978) (amend. 10).

ARTICLE V

I. SECTION 1: COURTS

The commission adopted an addition to section 1 which would provide that all judicial hearings, records, and proceedings will be open and accessible to the people. For an analysis of this new provision, see Dore, *Of Rights Lost and Gained*, *supra* this issue, and Cope, *To Be Let Alone: Florida's Proposed Right of Privacy*, *supra* this issue.

II. SECTION 2: ADMINISTRATION, PRACTICE AND PROCEDURE

The only change recommended in section 2 is in subsection (b), pertaining to the duties of the chief justice. The commission has recommended adding a new sentence to provide that the budget of the judicial branch will be submitted directly to the legislature.¹ The new provision would allow the judiciary to circumvent the executive branch. Presently, the judicial budget is submitted to the Department of Administration, and budgetary meetings are held with the Governor, who decides what recommendations will be made to the legislature.²

Although this specific language was not included in the original suggestions considered by the commission, similar suggestions were included.³ The Judiciary Committee, chaired by Commissioner Overton,⁴ introduced a proposal to accomplish the change.⁵ The commission adopted this proposal with very little debate.⁶ When the commission reconvened in March, the Fiscal Impact Select Committee offered an amendment to include the words "as provided by law" at the end of the sentence.⁷ The amendment was adopted.⁸

1. Fla. C.R.C., Proposal 62, Declaration of Intent. Most proposals introduced by the Judiciary Committee included a declaration of intent.

2. See FLA. STAT. §§ 216.011(e), .023, .151, .162 (1977).

3. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 35-36 (Sept. 27, 1977) (suggestions submitted by the public) [hereinafter cited as Suggestions].

4. Commissioner Overton, as chief justice of the Supreme Court of Florida, appointed himself to the commission. See FLA. CONST. art. XI, § 2(a)(4). As an appointing official, Commissioner Overton was allowed to address the commission at its opening session. He recommended that 1% of the general revenue funds be appropriated for the judicial branch, stating that "[t]he judicial branch is the only branch that has to go through both of the other two branches to have its fiscal needs met." Transcript of Fla. C.R.C. proceedings 22 (July 6, 1977).

5. Fla. C.R.C., Proposal 62; see Fla. C.R.C., Judiciary Committee (Group A) Minutes 3 (Oct. 20, 1977).

6. 9 Fla. C.R.C. Jour. 174 (Nov. 17, 1977); Transcript of Fla. C.R.C. proceedings 155-60 (Nov. 17, 1977).

7. 27 Fla. C.R.C. Jour. 533 (Mar. 7, 1978) (amend. 7).

8. *Id.*

III. SECTION 3: SUPREME COURT

Four changes have been suggested in section 3, relating to the supreme court. Two are in subsection (a), pertaining to the organization of the court. Both changes would delete existing language.

The first would eliminate the requirement that there be one justice of the supreme court from each appellate district. This requirement was included in 1976 in the legislative joint resolution proposing an amendment to provide for merit retention of appellate judges.⁹ The commission debate reflected concern that a residency requirement would restrict the ability of the statewide nominating commission and the Governor to choose the three best qualified candidates in the state.¹⁰ This change was among the suggestions originally made to the commission.¹¹ The Judiciary Committee discussed the change¹² and introduced the proposal that the commission adopted.¹³

The other change would delete the last sentence of subsection (a), which now provides: "[w]hen recusals for cause would prohibit the court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices." The Judiciary Committee, in its declaration of intent, stated that the provision was unnecessary because the chief justice has the authority under article V, section 2(b) to assign judges for temporary duty as justices.¹⁴ This change was not among the suggestions originally made to the commission but was suggested by the Judiciary Committee.¹⁵ It was linked by the committee to the proposed abolition of the residency requirement and was adopted overwhelmingly by the commission.¹⁶

The other two changes recommended in section 3 would be in subsection (b), pertaining to the jurisdiction of the supreme court. One change would confer jurisdiction on the supreme court to hear appeals in cases where the death penalty could have been imposed but was not. Currently, the supreme court has jurisdiction to hear appeals from final judgments of trial courts imposing the death penalty, but it does not have jurisdiction to hear appeals from life sentences unless the case otherwise falls within the supreme court's

9. Fla. CS/SJR 49 and 81 (1976), 1976 Fla. Laws 930-32.

10. Transcript of Fla. C.R.C. proceedings 166-69 (Nov. 17, 1977).

11. Suggestions, *supra* note 3, at addendum.

12. Fla. C.R.C., Judiciary Committee (Group A) Minutes 2 (Oct. 20, 1977).

13. Fla. C.R.C., Proposal 63; 9 Fla. C.R.C. Jour. 174 (Nov. 17, 1977).

14. Fla. C.R.C., Proposal 63.

15. Fla. C.R.C., Judiciary Committee (Group A) Minutes 4 (Oct. 20, 1977).

16. 9 Fla. C.R.C. Jour. 174 (Nov. 17, 1977).

appellate jurisdiction. For an analysis of this change, see Note, *A Step Toward Uniformity: Review of Life Sentences in Capital Cases*, *supra* this issue.

The other suggested change in the court's jurisdiction is in subsection (b)(3), pertaining to discretionary review. The proposal involves the court's ability to issue writs of certiorari to commissions with statewide jurisdiction. The new language would provide that the supreme court "may issue writs of certiorari to *the public service commission or commissions having statewide jurisdiction* established by general law" ¹⁷

This change was not among the suggestions originally made to the commission but was offered mainly to conform the provisions on certiorari to the changes proposed by the commission in the Public Service Commission.¹⁸ The proposal by Commissioner Mathews, which the commission adopted with amendments,¹⁹ stated that the court could issue writs of certiorari to commissions "having statewide jurisdiction established by general law or the constitution."²⁰ Upon reflection, this provision appeared to the commission to be too broad and was ultimately changed to name the Public Service Commission specifically and delete reference to commissions established by the constitution.²¹

IV. SECTION 7: SPECIALIZED DIVISIONS

One change has been proposed in section 7. The change would give the supreme court the authority to promulgate rules allowing all courts, except the supreme court, to sit in divisions. Under the 1968 constitution, divisions can be established only by general law.²²

This change was on the original list of suggestions²³ and was earmarked for further consideration.²⁴ The Judiciary Committee decided not to introduce a proposal to accomplish the change.²⁵ However, Commissioner Barkdull, an appellate judge, later sponsored a proposal to give the supreme court the authority to promulgate rules on divisions and also to allow the supreme court to sit in panels of

17. Fla. C.R.C., Rev. Fla. Const. art. V, § 3(b)(3) (May 11, 1978) (italicized language is suggested addition).

18. Transcript of Fla. C.R.C. proceedings 14-18 (Dec. 9, 1977).

19. 15 Fla. C.R.C. Jour. 237 (Dec. 9, 1977).

20. Fla. C.R.C., Proposal 142.

21. 27 Fla. C.R.C. Jour. 533 (Mar. 7, 1977) (amend. 9).

22. FLA. CONST. art. V, § 7.

23. Suggestions, *supra* note 3, at 32.

24. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 12 (Sept. 28, 1977) [hereinafter cited as List of 232].

25. Fla. C.R.C., Judiciary Committee (Group A) Minutes 3 (Oct. 13, 1977).

five or seven.²⁶ When Commissioner Barkdull's proposal was offered on the floor, the Judiciary Committee successfully sponsored an amendment to delete any reference to the supreme court's sitting in panels of five or seven.²⁷ The debate reflected that certain appellate courts had already established divisions by rule and that this change would legitimate those actions.²⁸ The proposal was adopted unanimously.²⁹

V. SECTION 8: ELIGIBILITY

Two changes are proposed in section 8, which deals with eligibility for judicial office. The first change would strike the existing language requiring the retirement of a judge or justice who has reached the age of seventy and insert a provision allowing the legislature to prescribe a retirement age of not less than seventy years. This controversial change was the subject of numerous amendments.

A suggestion to raise the retirement age to seventy-two was on the original list of suggestions³⁰ but did not receive further consideration. The Judiciary Committee decided not to recommend changing the mandatory retirement age,³¹ however, the committee introduced a proposal to change another sentence in section 8.³² This proposal carried Commissioner Don Reed's amendment to strike the mandatory retirement language.³³ The amendment was adopted³⁴ despite opposition by most members of the Judiciary Committee.³⁵ A later attempt by Commissioner Overton to reinsert the deleted language but raise the retirement age to seventy-four failed.³⁶

A compromise amendment, allowing the legislature to prescribe

26. Fla. C.R.C., Proposal 22.

27. 9 Fla. C.R.C. Jour. 174 (Nov. 17, 1977).

28. Transcript of Fla. C.R.C. proceedings 178 (Nov. 17, 1977). Commissioner Barkdull, sponsor of the proposal and a member of the Third District Court of Appeal, stated that his court had established a family division by rule.

An interesting debate occurred among Commissioner Brantley, president of the senate, Commissioner Douglass, a lawyer, and Commissioner Barkdull, concerning the difference between substantive rules of law and procedural rules of court. *Id.* at 178-84.

29. 9 Fla. C.R.C. Jour. 174 (Nov. 17, 1977).

30. Suggestions, *supra* note 3, at 33.

31. Fla. C.R.C., Judiciary Committee (Group A) Minutes 2 (Oct. 13, 1977).

32. Fla. C.R.C., Proposal 64.

33. The amendment called for striking the sentence commencing "No justice or judge"

34. 9 Fla. C.R.C. Jour. 174 (Nov. 17, 1977).

35. Transcript of Fla. C.R.C. proceedings 194-210 (Nov. 17, 1977).

36. Amendment 12 to article V would insert the following: "No justice or judge shall serve after attaining the age of 74 years except upon temporary assignment or to complete a term, one-half of which he has served." 27 Fla. C.R.C. Jour. 534 (Mar. 7, 1978).

a retirement age of not less than seventy, was eventually introduced by Commissioner Don Reed, sponsor of the original amendment to delete the existing language.³⁷ This amendment included a schedule item providing that "[u]ntil changed by law, no justice or judge shall serve after attaining the age of seventy years" This amendment was adopted.³⁸ Thus, the current requirement of retirement at age seventy will remain in effect unless the legislature enacts a law to raise the mandatory retirement age.

The other proposed change would require judges of county courts to be members of The Florida Bar. Currently, the legislature may exempt judges of county courts from this requirement. The legislature has exercised this power,³⁹ allowing nonlawyer judges to preside over the courts of counties with a population of 40,000 or less.

This proposal was among the original suggestions made to the commission,⁴⁰ and it received the requisite number of votes for further consideration.⁴¹ The Judiciary Committee introduced a proposal to accomplish the change.⁴² The proposal was the subject of heated debate, with the proponents asserting that it would allow better use of manpower because, as lawyers, the judges of county courts could assist other courts within the circuit.⁴³ The proponents also asserted that a recent United States Supreme Court decision⁴⁴ has cast doubt on the constitutionality of nonlawyer judges presiding over criminal proceedings. The opponents argued that many smaller counties in the state do not have enough eligible lawyers who are interested in being county court judges.⁴⁵ The opponents successfully offered an amendment reinstating the legislative power to alter the Bar membership requirement for county judges.⁴⁶ On reconsideration,⁴⁷ however, the amendment failed, and the proposal

37. Amendment A to article V would insert, after "court": "The legislature may prescribe a retirement age of not less than seventy years of age for justices and judges."

38. 30 Fla. C.R.C. Jour. 565 (Apr. 14, 1978).

39. FLA. STAT. § 34.021 (1977).

40. Suggestions, *supra* note 3, at 33.

41. List of 232, *supra* note 24, at 12.

42. Fla. C.R.C., Proposal 64.

43. Transcript of Fla. C.R.C. proceedings 187-232 (Nov. 17, 1977).

44. *North v. Russell*, 427 U.S. 328 (1976). In this case the plaintiff, who was charged with a misdemeanor for which he was subject to possible imprisonment, argued that his trial in a Kentucky police court denied him due process of law because the trial judge was not a lawyer. Kentucky had a two-tier court system. The police courts (the first tier), whose judges did not have to be lawyers, had jurisdiction over misdemeanors. An appeal of right from the decision of a police judge to the circuit court (the second tier) and a jury trial *de novo* in that court were provided by law. The Court held that the availability of a trial *de novo* before a lawyer judge in the circuit court afforded the plaintiff due process of law.

45. Transcript of Fla. C.R.C. proceedings 211-23 (Nov. 17, 1977).

46. 9 Fla. C.R.C. Jour. 175 (Nov. 17, 1977) (amend. 2).

47. 11 Fla. C.R.C. Jour. 199 (Nov. 22, 1977).

requiring all judges of county courts to be members of The Florida Bar was adopted.⁴⁸

The adopted proposal includes a schedule which would become part of section 8.⁴⁹ The schedule would "grandfather" in all present nonlawyer county court judges whose service is continuous.⁵⁰

VI. SECTION 10: RETENTION

The commission has proposed a major political change in article V, section 10. It would extend the merit retention system to circuit and county court judges. If adopted, the proposal would expand the merit system which was approved by the voters for appellate judges and justices by constitutional amendment in 1976.⁵¹ The new provision also would increase the terms of judges of county courts from four to six years.

Merit retention for circuit and county court judges was among the original suggestions to the commission.⁵² Both issues received the requisite number of votes for further consideration⁵³ and were discussed at length by the Judiciary Committee.⁵⁴ The Conference of County Court Judges testified that they were opposed to merit retention but said that if merit retention was to be extended to circuit court judges, the county court judges should be subject to the same retention system.⁵⁵ The committee introduced a proposal to extend merit retention to both circuit and county court judges.⁵⁶

Predictably, the proposal was the subject of much debate. The proponents asserted that merit retention is necessary to assure the independence and impartiality of the judiciary.⁵⁷ Opponents of merit retention argued that the people should choose their local judges through popular election.⁵⁸ The proposal was adopted as

48. *Id.*

49. Fla. C.R.C., Rev. Fla. Const. art. V, § 8, Schedule ¶ (b) (May 11, 1978).

50. The debate reflects that a nonlawyer county court judge cannot resign for a period of time and then seek the position again. Transcript of Fla. C.R.C. proceedings 190, 228-29 (Nov. 17, 1977).

51. FLA. CONST. art. V, § 10 (1968, amended 1976). Vote totals were: 1,600,944 "for"; 527,056 "against." Florida Dep't of State, Division of Elections, Tabulation of Official Votes, Florida General Election, Nov. 2, 1976. See generally Garwood, *Judicial Revision—An Argument for the Merit Plan for Judicial Selection and Tenure*, 5 TEX. TECH. L. REV. 1 (1973); Mullinax, *Judicial Revision—An Argument Against the Merit Plan for Judicial Selection and Tenure*, 5 TEX. TECH. L. REV. 21 (1973).

52. Suggestions, *supra* note 3, at 33.

53. List of 232, *supra* note 24, at 12.

54. Fla. C.R.C., Judiciary Committee (Group A) Minutes 3 (Oct. 13, 1977); *id.* at 2 (Oct. 20, 1977).

55. Fla. C.R.C., Judiciary Committee (Group A) Minutes 2 (Oct. 20, 1977).

56. Fla. C.R.C., Proposal 66.

57. Transcript of Fla. C.R.C. proceedings 129-33, 176-81 (Nov. 21, 1977).

58. *Id.* at 162-75.

introduced.⁵⁹

The Committee on Style and Drafting recommended that the phrase "on the question of retention" be added after the word "voting" to clarify the number of votes needed to retain a judge or justice.⁶⁰

VII. SECTION 11: VACANCIES

There are four proposed changes in section 11, which provides the procedure for filling judicial vacancies. The first change would be in subsection (a), pertaining to nominations. The new provision would combine current subsections (b) and (c) and would provide for a uniform procedure for nominations to the supreme court, district courts of appeal, circuit courts, and county courts. The judicial nominating commissions (JNC's) would submit to the Governor no fewer than three nominees for any judicial vacancy. Currently, the JNC's can submit only three nominees for appellate court positions but can submit more than three nominees for circuit and county court positions.⁶¹

This change was among the original suggestions made to the commission,⁶² was earmarked for further study,⁶³ and was introduced as a proposal by the Judiciary Committee.⁶⁴ Subsection (a) of the proposal was adopted as introduced.⁶⁵

Another proposed change in section 11 is in subsection (b) (currently (c)), which provides the time frame during which nominations are to be made. The subsection as changed would read: "The nominations shall be made within thirty days from the occurrence of a vacancy or from the acceptance of a resignation by the governor, whichever is sooner"⁶⁶

This change would allow the JNC's to commence the nominating process on the date the resignation is accepted by the Governor

59. 10 Fla. C.R.C. Jour. 184 (Nov. 21, 1977).

60. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission n.26 (Mar. 6, 1978).

61. Before the 1976 amendment to art. V, § 11, the JNC's submitted the names of "not fewer than three persons" to the Governor for supreme court and district courts of appeal vacancies. FLA. CONST. art. V, § 11 (1968, amended 1976).

62. Suggestions, *supra* note 3, at 33.

63. List of 232, *supra* note 24, at 13.

64. Fla. C.R.C., Proposal 67. The declaration of intent drafted by the Judiciary Committee stated that combining subsections (a) and (b) would eliminate the hiatus period that exists when a circuit or county judgeship becomes vacant after the qualifying date for the next general election.

65. 10 Fla. C.R.C. Jour. 184-85 (Nov. 21, 1977).

66. Fla. C.R.C., Rev. Fla. Const. art. V, § 11(b) (May 11, 1978).

rather than the date the office becomes vacant.⁶⁷ This proposed change was not among the original suggestions made to the commission. It was considered by the Judiciary Committee, which introduced a proposal to accomplish the change.⁶⁸ The proposed change was adopted by the commission.⁶⁹

The other changes would be in subsection (c), which pertains to the judicial nominating commissions. The first change would require that uniform rules of procedure be prescribed by the supreme court for the operation of all JNC's. Currently there is no requirement for uniformity of procedure, and thus many of the commissions operate differently.⁷⁰

This proposal, which was introduced by the Judiciary Committee,⁷¹ was not among the original suggestions made to the commission. The proposal as introduced provided that the Governor would prescribe the rules. However, a later proposal to revise the same section would change this to allow the supreme court to prescribe the rules.⁷²

The last change in subsection (c) would require that all proceedings and records of the JNC's be open and accessible to the public. This change as well as a similar proposed revision to article V, section 1, is discussed in Dore, *Of Rights Lost and Gained*, *supra* this issue, and Cope, *To Be Let Alone: Florida's Proposed Right of Privacy*, *supra* this issue.

VIII. SECTION 12: DISCIPLINE

The commission proposed only one substantive change in section 12, which provides for the discipline and removal of judges and justices. Subsection (b), which pertains to the membership of the Judicial Qualifications Commission, would prohibit members appointed by the Board of Governors of The Florida Bar from serving

67. Fla. C.R.C., Proposal 67, Declaration of Intent. See also Fla. C.R.C., Judiciary Committee (Group A) Minutes 2 (Oct. 13, 1977) (testimony of Jane Love, the Governor's appointments secretary in charge of coordinating all executive appointments, requesting a clarification of what constitutes the "occurrence of a vacancy").

68. Fla. C.R.C., Proposal 67.

69. 10 Fla. C.R.C. Jour. 184-85 (Nov. 21, 1977).

70. Transcript of Fla. C.R.C. proceedings 184 (Nov. 21, 1977) (remarks of Commissioner Overton); see *In re Advisory Opinion to the Governor*, 276 So. 2d 25, 30-31 (Fla. 1973).

71. Fla. C.R.C., Proposal 67, *adopted*, 10 Fla. C.R.C. Jour. 184-85 (Nov. 21, 1977).

72. Fla. C.R.C., Proposal 215, *adopted*, 20 Fla. C.R.C. Jour. 310 (Jan. 13, 1978). This proposal was introduced to undo amendment 3 to Proposal 67, adopted November 21, 1977, which provided that "All proceedings and records of the judicial nominating commission shall be open and accessible to the public." When Proposal 215 was offered, Commissioner Moyle introduced an amendment to return the rulemaking power to the Governor, but the amendment was defeated. 20 Fla. C.R.C. Jour. 310 (Jan. 13, 1978).

consecutive terms.

This change was not among the original suggestions to the commission but was introduced as a proposal by Commissioner Barkdull.⁷³ Barkdull, a member of the Judicial Qualifications Commission, explained that the new language is needed because the Bar appointees to the commission have served long terms, and there is some sentiment that they might have influence over judges.⁷⁴ The proposal was uncontroversial and was adopted unanimously.⁷⁵

The Committee on Style and Drafting proposed two technical changes in section 12. One change would delete the last phrase in subsection (g), which currently refers to the Governor's power of suspension and the senate's power of removal as being both alternative and cumulative to the power of removal conferred in section 12.⁷⁶ The reference to the Governor's suspension power was deleted to conform to proposed changes in article III, section 17(a). The other change would delete the schedule to section 12, which was inserted in 1976 when this section was substantially rewritten by the legislature.⁷⁷

IX. SECTION 16: CLERKS OF THE CIRCUIT COURTS

The commission has proposed one change in this section. It would provide that when the duties of the clerk are divided between two officers, one will serve as the clerk of court and the recorder, and the other will serve as ex officio clerk of the board of county commissioners, auditor, and custodian of all funds. Currently, the officer serving as ex officio clerk of the board of county commissioners performs the recorder function.

This change was not among the suggestions initially made to the commission. However, a related change in article VIII, section 1 (d), which pertains to county officers, was included.⁷⁸ The Local Government Committee and the Judiciary Committee collaborated in proposing changes in article V, section 16.⁷⁹

Commissioner Overton introduced a proposal to accomplish this change in article V, section 16.⁸⁰ The proposal, as explained by

73. Fla. C.R.C., Proposal 23.

74. Transcript of Fla. C.R.C. proceedings 252 (Nov. 17, 1977).

75. 9 Fla. C.R.C. Jour. 175-76 (Nov. 17, 1977).

76. Fla. C.R.C., Comm. on Style and Drafting, Second Report to the Florida Constitution Revision Commission 11 (Apr. 14, 1978).

77. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 58 (Mar. 6, 1978).

78. Suggestions, *supra* note 3, at 52.

79. Fla. C.R.C., Comm. on the Judiciary, Second Report 30 (Jan. 9, 1978).

80. Fla. C.R.C., Proposal 222.

Commissioner Overton, would link the recorder function to the judicial function if the offices were split because the recording of deeds is more a judicial than a custodial function.⁸¹ The proposal as originally adopted stated that if the duties were divided, the officers would be elected for four-year terms unless otherwise provided.⁸² This language was deleted when the proposal was reconsidered and adopted.⁸³

A schedule item would validate any division of the clerk's duties which had been made prior to this change.⁸⁴

X. SECTION 17: STATE ATTORNEY

The sole proposed change in section 17 would change the title "state attorney" to "district attorney." This change was on the list of suggestions initially made to the commission.⁸⁵ It received the requisite number of votes for further consideration⁸⁶ and was introduced as a proposal by the Judiciary Committee.⁸⁷ The debate reflected concern that the title "state attorney" does not adequately describe the job of prosecutor and that citizens could more easily identify this function if the title were "district attorney."⁸⁸ The proposal originally failed⁸⁹ but was adopted upon reconsideration.⁹⁰

ARTICLE VI

I. SECTION 1: REGULATION OF ELECTIONS

The commission proposed one change in section 1. The section would now provide in part that "[a]ll elections by the people shall be by direct and secret vote *at places accessible to the public.*"¹ The

81. Transcript of Fla. C.R.C. proceedings 136 (Jan. 13, 1978).

82. Fla. C.R.C., Proposal 222, *adopted with amendment*, 20 Fla. C.R.C. Jour. 310 (Jan. 13, 1978).

83. Fla. C.R.C., Proposal 222. Amendment 2, by Commissioner Overton, provided: "Strike 'If the duties are so divided, the two officers shall be elected in that county for four-year terms unless otherwise provided by general law or county charter or special law approved by the vote of the electors.'" *Adopted*, 22 Fla. C.R.C. Jour. 332 (Jan. 24, 1978).

84. 30 Fla. C.R.C. Jour. 565 (Apr. 14, 1978) (amend. B).

85. Suggestions, *supra* note 3, at 34.

86. List of 232, *supra* note 24, at 13.

87. Fla. C.R.C., Proposal 68.

88. Transcript of Fla. C.R.C. proceedings 242 (Nov. 17, 1977).

89. 9 Fla. C.R.C. Jour. 175 (Nov. 17, 1977).

90. 10 Fla. C.R.C. Jour. 182 (Nov. 21, 1977).

1. Fla. C.R.C., Rev. Fla. Const. art. VI, § 1 (May 11, 1978) (italicized language is proposed addition).

new language conveys the sentiment of the commission that polling places should be accessible.

This change was not on the original list of suggestions made to the commission but was the subject of a proposal by Commissioner Barkdull.² His proposal provided that elections be held "at a public place." This prompted a different proposal by Commissioner Birchfield³ which required that elections be held "on public property or property used predominantly for educational, literary, scientific, religious or charitable purposes." Commissioner Birchfield's proposal was considered first and was supported by Commissioner Barkdull,⁴ who withdrew his proposal.⁵

Proponents of the Birchfield proposal asserted that the election laws could be enforced more easily if the polling places were public buildings.⁶ The opponents countered that the proposal would cause considerable problems to supervisors of elections⁷ and would be better left to statutory revision.⁸ The Birchfield proposal was adopted,⁹ however, and attempts to reconsider it failed.

About three weeks later, Commissioners Barkdull and Birchfield introduced a new proposal to change section 1.¹⁰ This proposal provided that polling places be "accessible to the public." Commissioner Birchfield explained that, in retrospect, he believed that his earlier proposal would cause too much trouble for local officials and that adoption of the new proposal was necessary to override the old one.¹¹ The new proposal was adopted with little debate.¹² A later attempt to delete the language was defeated,¹³ thereby establishing

2. Fla. C.R.C., Proposal 81.

3. Fla. C.R.C., Proposal 111.

4. Transcript of Fla. C.R.C. proceedings 207 (Dec. 7, 1977).

5. 13 Fla. C.R.C. Jour. 225 (Dec. 7, 1977).

6. Transcript of Fla. C.R.C. proceedings 207-08 (Dec. 7, 1977).

7. *Id.* at 208-13. During debate on a motion to reconsider the proposal, Commissioner Moyle quoted the Dade County Supervisor of Elections as saying that it might be devastating to put such language in the constitution. Transcript of Fla. C.R.C. proceedings 109-10 (Dec. 8, 1977).

8. Transcript of Fla. C.R.C. proceedings 210-13 (Dec. 7, 1977).

9. 13 Fla. C.R.C. Jour. 225 (Dec. 7, 1977).

10. Fla. C.R.C., Proposal 224.

11. Transcript of Fla. C.R.C. proceedings 117-18 (Jan. 13, 1978). Commissioner Birchfield explained his intent that Proposal 224 supersede Proposal 111. The chairman ruled that it did supersede Proposal 111.

12. 20 Fla. C.R.C. Jour. 309 (Jan. 13, 1978).

13. 28 Fla. C.R.C. Jour. 535 (Mar. 8, 1978) (amend. 2). Commissioner Burkholz explained that the reason for the amendment was the possible fiscal impact of the change. A fiscal impact statement prepared by the Senate Appropriations Committee indicated the potential cost could be great and might include the cost of transportation to ensure access to the polls. Fla. S., Appropriations Comm., Preliminary Analysis — Pending Amendments to Constitution Revision Commission's Proposals 4 (Mar. 7, 1978) (commonly referred to as Fiscal Impact Summary).

the significance of the new language.¹⁴

II. SECTION 2: ELECTORS

The commission has proposed that section 2, relating to electors, be completely rewritten. The proposed new section would provide: "Any citizen of the United States eighteen years of age or older who complies with the registration and residence requirements provided by law shall be an elector."¹⁵

The existing constitutional language requires an elector to be twenty-one years old and contains one-year state and six-month county durational residency requirements. The twenty-sixth amendment to the United States Constitution reduced the voting age from twenty-one to eighteen,¹⁶ and the United States Supreme Court has ruled that durational residency requirements for voting of one year in the state and three months in the county violate the equal protection clause of the fourteenth amendment.¹⁷ Therefore, the validity of the current provision is open to question.

Lowering the voting age to eighteen and lowering the durational residency requirements were among the suggestions originally made to the commission.¹⁸ The former was among the issues to be studied further,¹⁹ but the latter was not. The Ethics, Privacy and Elections Committee took both issues up at its first meeting and agreed on language to be introduced as a proposal.²⁰ This proposal²¹ was adopted by the commission²² after a brief explanation by Commissioner Moyle, chairman of the Ethics, Privacy and Elections Committee, that the new section would give the legislature the flexibility to establish residency requirements consistent with federal law.²³

14. Arguably, if the effect of the new language was merely to reinstate the status quo, there would have been no opposition to an amendment striking the language. Commissioner James spoke against the amendment, asserting that "accessible to the public" would mean that polling places could no longer be established within "walled cities" where pollwatchers could not get by the security guard at the gate. 1 Transcript of Fla. C.R.C. proceedings 5-6 (Mar. 8, 1978).

15. Fla. C.R.C., Rev. Fla. Const. art. VI, § 2 (May 11, 1978).

16. U.S. CONST. amend. XXVI, § 1 provides: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

17. *Dunn v. Blumstein*, 405 U.S. 330 (1972).

18. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 37 (Sept. 27, 1977) (suggestions submitted by the public).

19. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 14 (Sept. 28, 1977).

20. Fla. C.R.C., Ethics, Privacy and Elections Committee Minutes 3 (Oct. 5, 1977).

21. Fla. C.R.C., Proposal 2.

22. 11 Fla. C.R.C. Jour. 201 (Nov. 22, 1977).

23. Transcript of Fla. C.R.C. proceedings 217 (Nov. 22, 1977).

There was one proposed amendment to the original proposal. It substituted the words "complies with" for "meets" and was viewed as only a technical change.²⁴ The amendment was adopted.²⁵

III. SECTION 4: DISQUALIFICATIONS

The commission has proposed a significant change in section 4. The revised section would provide:

No person while incarcerated, on parole, or on probation, as a result of having been adjudicated guilty of a felony, shall be qualified to vote or hold office, nor shall a person adjudicated in this or any other state to be mentally incompetent be qualified to vote or hold office until adjudicated competent in a manner provided by law.²⁶

Currently, a person convicted of a felony or adjudicated incompetent may not vote or hold office until his civil rights are restored or the disability is removed. As a result, the Governor receives over 1,000 petitions each month seeking restoration of the petitioners' civil rights.²⁷ In 1974, the legislature enacted a law²⁸ providing for automatic restoration of one's right to vote and hold office. The Governor requested an advisory opinion from the Florida Supreme Court on the impact of this statute. The court advised²⁹ that the statute was an unconstitutional invasion of the clemency authority, which is vested exclusively in the executive branch.³⁰ Currently, restoration of rights is governed by a rule³¹ promulgated by the Governor and Cabinet, but the validity of the rule has been questioned.³²

The new provision would remedy these problems by allowing a person adjudicated guilty³³ of a felony to vote and hold office once the person has completed a prison, probation, or parole term. The

24. Transcript of Fla. C.R.C. proceedings 82 (Mar. 6, 1978) (remarks of Commissioner Mathews).

25. 26 Fla. C.R.C. Jour. 521 (Mar. 6, 1978).

26. See Fla. C.R.C., Rev. Fla. Const. art. VI, § 4 (May 11, 1978).

27. Transcript of Fla. C.R.C. proceedings 217 (Dec. 7, 1977) (remarks of Commissioner DeGrove).

28. Ch. 74-112, 1974 Fla. Laws 332 (current version at FLA. STAT. § 944.292 (1977)).

29. *In re Advisory Opinion of the Governor Civil Rights*, 306 So. 2d 520 (Fla. 1975).

30. FLA. CONST. art. IV, § 8(a). See also *id.* art. VI, § 4.

31. FLA. R. EXEC. CLEM. § 9(a).

32. *In re Florida Bd. of Bar Examiners*, 341 So. 2d 503 (Fla. 1977).

33. Presumably, if adjudication of guilt is withheld, the person's civil rights will not be forfeited even if the person is incarcerated, on parole, or on probation. See Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission n.31 (Mar. 6, 1978).

procedure would be somewhat different for persons adjudicated mentally incompetent. The new language would require that one be adjudicated competent in a manner provided by law before one could vote or hold office.³⁴

This change was not on the original list of suggestions to the commission but was brought to the attention of the Ethics, Privacy and Elections Committee by a letter from Governor Askew requesting that provision be made for automatic restoration of rights.³⁵ The committee introduced a proposal to accomplish this change.³⁶ When the proposal was brought up for full debate, Commissioners Moyle and Overton successfully offered an amendment to strike the language of the proposal and insert the language that was ultimately adopted.³⁷ The proposal was adopted as amended,³⁸ and attempts to reconsider it failed. The Committee on Style and Drafting recommended deleting the requirement of a conviction and substituting the requirement of an adjudication of guilt.³⁹ This recommendation was adopted.⁴⁰

ARTICLE VII

I. SECTION 3: TAXES; EXEMPTIONS

Three changes have been proposed in section 3. Subsection (a) would be changed to allow municipal property which is held or used for municipal or public purposes to be tax-exempt. Currently, active use of the property is required for tax exemption.¹

Although this change was among the suggestions initially made

34. Although this would seem to establish a more burdensome procedure for persons adjudicated mentally incompetent, the procedure may be required because mental disability does not legally vanish at a time certain but generally requires court action.

35. Letter from Gov. Reubin Askew to Commission Chairman Talbot D'Alemberte (Nov. 3, 1977); see Fla. C.R.C., Ethics, Privacy and Elections Committee Minutes 4 (Nov. 21, 1977).

36. Fla. C.R.C., Proposal 136.

37. 13 Fla. C.R.C. Jour. 225 (Dec. 7, 1977) (amend. 1). Commissioner Moyle explained that the original proposal did not accomplish the desired end of providing for automatic restoration of rights. Transcript of Fla. C.R.C. proceedings 216 (Dec. 7, 1977).

38. 13 Fla. C.R.C. Jour. 225 (Dec. 7, 1977).

39. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 70 (Mar. 6, 1978).

40. 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978). The committee's report was part of Proposal 258, which was not adopted until April 14, 1978.

1. See Note, *Property Tax Exemptions Under Article VII, Section 3(a) of the Florida Constitution of 1968*, 21 U. FLA. L. REV. 641, 643-44 (1969).

to the commission,² it did not receive the requisite votes for further consideration. Nor was a proposal on the issue introduced. The change was suggested by an amendment to section 3 offered at one of the last meetings of the commission. The amendment was adopted unanimously³ after an explanation by Commissioner De-Grove.⁴

Another change in section 3 would expand the class of persons eligible for a tax exemption under subsection (b). Currently, one must be the head of a household and reside within the state to be eligible for a \$1,000 personal property exemption. The residency and head-of-household requirements would be dropped, thereby extending this exemption of all natural persons. An additional tax exemption of \$500 is currently available to every widow or person who is blind or totally and permanently disabled. This exemption would be extended to widowers. The commission recognized that the current provision has been upheld by the United States Supreme Court,⁵ but it felt that in the interests of fairness and consistency, the exemption should be extended to widowers.⁶

Neither of these issues was among the suggestions originally considered by the commission, nor were proposals on the issues introduced. The changes were suggested by an amendment, sponsored by Commissioners Shevin and James, to delete the residency and head-of-household requirements.⁷ This amendment was amended to add widowers⁸ and was adopted.⁹ The Committee on Style and Drafting recommended inclusion of "to every natural person," which the commission adopted.¹⁰

The most significant change in section 3 would be the grant of an ad valorem tax exemption to leasehold interests in property owned by the United States, the state, or any political subdivision of the state. For a detailed analysis of this proposed new provision, see Note, *Ad Valorem Taxation of Leasehold Interests in Governmentally Owned Property*, *supra* this issue.

2. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 41 (Sept. 27, 1977) (suggestions submitted by the public) [hereinafter cited as Suggestions].

3. 30 Fla. C.R.C. Jour. 566 (Apr. 14, 1978) (amend. E).

4. Transcript of Fla. C.R.C. proceedings 186-92 (Apr. 14, 1978).

5. *Kahn v. Shevin*, 416 U.S. 351 (1974).

6. 2 Transcript of Fla. C.R.C. proceedings 140-41 (Mar. 9, 1978) (remarks of Commissioner Annis).

7. 29 Fla. C.R.C. Jour. 552 (Mar. 9, 1978) (amend. 15).

8. *Id.* (amend. 15A).

9. *Id.*

10. 30 Fla. C.R.C. Jour. 558 (Apr. 14, 1978).

II. SECTION 4: TAXATION; ASSESSMENTS

Article VII, section 4 requires that property be assessed at full value for ad valorem taxation. Thus, constitutional authority is needed to depart from this standard.¹¹ Section 4 also provides that agricultural and noncommercial recreational land as well as stock in trade and livestock (inventory) may be assessed at less than full value. The proposed 1978 revision would expand these potential exemptions to include historic property, property with solar energy systems, and blighted property scheduled for redevelopment. It also would provide additional exemptions for inventory and would give the legislature the authority to provide for biennial, rather than annual, revaluation of property.¹²

While the exemption for agricultural and recreational lands would not be changed, the exemption for inventory would. Subsection (b) would allow inventory to be classified for tax purposes. The legislature has already established varying assessment levels for inventory.¹³ But because article VII, section 2 requires that ad valorem taxes "be at a uniform rate within each taxing unit," some commissioners were concerned that such differential assessment levels might be unconstitutional.¹⁴ The new language would legitimize differential assessment levels for inventory.

The new language would also allow the legislature to exempt inventory from taxation. Historically, inventory has been assessed at only a fraction of its true value, and within the past few years the legislature has lowered the percentage.¹⁵ Thus, the proposed language would reflect this trend and permit the legislature to grant a complete exemption.

A suggestion to exempt inventory from taxation was among those initially considered by the commission,¹⁶ and it received the requisite number of votes for further consideration.¹⁷ A proposal providing for the exemption and classification of inventory was introduced by Commissioners Ware, Brantley, and Mathews.¹⁸ It was adopted

11. *Interlachen Lake Estates, Inc. v. Snyder*, 304 So. 2d 433 (Fla. 1974).

12. Fla. C.R.C., Rev. Fla. Const. art. VII, § 4(b) (May 11, 1978).

13. FLA. STAT. § 193.511 (1977).

14. Transcript of Fla. C.R.C. proceedings 199 (Dec. 9, 1977) (remarks of Commissioner Mathews).

15. The rate of taxation for inventory was 25%. Ch. 70-243, § 21, 1970 Fla. Laws 728 (current version at FLA. STAT. § 193.511 (1977)). This was reduced to 10% in 1977. Ch. 77-476, 1977 Fla. Laws 2100.

16. Suggestions, *supra* note 2, at 42.

17. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 15 (Sept. 28, 1977) [hereinafter cited as List of 232].

18. Fla. C.R.C., Proposal 72.

without amendment.¹⁹ The Committee on Style and Drafting recommended several technical changes which were adopted.²⁰

A proposed new subsection (b)(2) would allow the legislature to give preferential tax treatment to historic property. This change would encourage the preservation and renovation of historic property.²¹ The provision would be in two parts. The first part would grant the legislature authority to determine the percentage at which property will be assessed and to establish procedures for determining value. The second part, found in article X, section 11 (h) (rules of construction), would specify that to qualify for exemption as historic property, the property must meet the criteria²² for listing in the *National Register of Historic Places*.²³ Currently, historic property does not enjoy a favorable tax status. In fact, it is generally taxed at a higher rate than other property because it is usually located in expensive inner-city areas where renovations result in higher assessments.²⁴

This issue was among the suggestions initially made to the commission,²⁵ and it qualified for further study.²⁶ A proposal allowing the legislature to assess historic properties on the basis of character or use was introduced by Commissioner Nat Reed and others.²⁷ The proposal was amended to allow properties listed in the *National Register of Historic Places* to be valued at a specified percentage of their assessed value.²⁸ The amended proposal was adopted.²⁹ The Committee on Style and Drafting recommended that the reference to the *National Register* be moved to article X, section 12,³⁰ and

19. 15 Fla. C.R.C. Jour. 242 (Dec. 9, 1977).

20. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 73 (Mar. 6, 1978) (renumbering section) [hereinafter cited as Style and Drafting Report]; 30 Fla. C.R.C. Jour. 558, 570 (Apr. 14, 1978) (amend. 42, substituting "exempted" for "exempt").

21. Transcript of Fla. C.R.C. proceedings 132-33 (Jan. 24, 1978) (remarks of Commissioner Nat Reed).

22. The *Code of Federal Regulations* specifies the criteria and procedure for listing in the *National Register of Historic Places*. 36 C.F.R. §§ 60.1-.17 (1977).

23. U.S. NATIONAL PARK SERVICE, DEP'T OF THE INTERIOR, NATIONAL REGISTER OF HISTORIC PLACES (1976). The *National Register of Historic Places* is published annually by the Department of the Interior and is used by federal, state, and local governments to identify cultural resources and to indicate properties that should be protected.

24. The Center for Governmental Responsibility, Public Testimony Before the Florida Constitution Revision Commission, Summaries of Hearings August 18, 1977 - September 26, 1977, at 145 (Oct. 6, 1977) [hereinafter cited as Public Testimony].

25. Suggestions, *supra* note 2, at 42-43.

26. List of 232, *supra* note 17, at 15.

27. Fla. C.R.C., Proposal 210.

28. See 22 Fla. C.R.C. Jour. 334 (Jan. 24, 1978) (amend. 1 by Commissioner N. Reed).

29. *Id.*

30. 30 Fla. C.R.C. Jour. 558 (Apr. 14, 1978) (amend. 43).

made various technical changes,³¹ all of which were adopted.³²

Section 4 would be amended further to provide authority for the exemption by law of any increase in property value resulting from the installation of a solar energy system. The exemption would have an automatic expiration date of December 31, 1988. The provision would overcome the existing constitutional impediment to legislation exempting solar energy systems from ad valorem taxation³³ and would provide an incentive for the use of solar energy.³⁴

Suggestions to provide an exemption for solar energy systems were among those originally considered by the commission³⁵ and were scheduled for further study.³⁶ A proposal to accomplish the change was introduced and adopted.³⁷ The Committee on Style and Drafting substantially reworded the subsection in its initial report to the commission.³⁸ A subsequent amendment to delete the entire subsection was unanimously adopted³⁹ because the commission believed that solar energy systems are not yet effective and therefore should not be recognized in the constitution.⁴⁰ The subsection was later reinserted,⁴¹ however, because without it the legislature could never create an exemption for solar energy systems.⁴²

The constitutional requirement that all property be assessed at just value for ad valorem taxation⁴³ prompted the legislature to provide for the annual appraisal of all property.⁴⁴ However, inflation, an increasing population, and a very mobile society have resulted in a fluctuating housing market that has been difficult, if not impossible, to appraise on an annual basis.⁴⁵ In response to this problem, the revision commission proposes to give the legislature authority to provide for biennial reappraisal of property, while still

31. Style and Drafting Report, *supra* note 20, at 73-74; 28 Fla. C.R.C. Jour. 539 (Mar. 8, 1978) (amend. 1).

32. 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978).

33. Transcript of Fla. C.R.C. proceedings 296 (Jan. 24, 1978) (remarks of Commissioner Ware).

34. *Id.* at 295.

35. Suggestions, *supra* note 2, at 42-43.

36. List of 232, *supra* note 17, at 15.

37. Fla. C.R.C., Proposal 240; 22 Fla. C.R.C. Jour. 337 (Jan. 24, 1978).

38. Style and Drafting Report, *supra* note 20, at 73, *adopted*, 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978).

39. 28 Fla. C.R.C. Jour. 538 (Mar. 8, 1978).

40. 2 Transcript of Fla. C.R.C. proceedings 4 (Mar. 8, 1978) (remarks of Commissioner Ausley).

41. 30 Fla. C.R.C. Jour. 566 (Apr. 14, 1978) (amend. C by Commissioner Ware).

42. Transcript of Fla. C.R.C. proceedings 183-84 (Apr. 14, 1978) (remarks of Commissioner Ware).

43. FLA. CONST. art. VII, §§ 2, 4.

44. FLA. STAT. § 192.042 (1977).

45. Public Testimony, *supra* note 24, at 145.

requiring annual adjustments for property that is damaged, destroyed, or otherwise changed.

County property appraisers testified on this issue at the public hearings.⁴⁶ As a result, a suggestion to provide for reappraisal every four years was placed on the list of issues to receive further study.⁴⁷ Commissioner Kenneth Plante introduced a proposal providing for reappraisal every four years.⁴⁸ An amendment shortened the time to three years, and the amended proposal was adopted.⁴⁹

The revision commission Committee on Fiscal Impact reported that the yearly loss in revenues from triennial reappraisal would be \$150 million and that a biennial reappraisal would be more advisable.⁵⁰ Therefore, an amendment providing for biennial reappraisal was introduced and adopted.⁵¹

Perhaps the most significant change in section 4 would be proposed subsection (b)(5). It would give the legislature authority to enact legislation allowing local governments to use tax abatement programs to encourage redevelopment of slum or blighted property. Under such a program, a local government could designate property as a blighted area for redevelopment purposes and then revalue the property for tax purposes. The constitutional provision would allow the legislature to prescribe methods for revaluation of property. But it would also require that the abatement be limited to twenty-five years and that the minimum assessed value be no less than the assessed value of the land, less improvements, in the year immediately prior to its designation as a blighted area. Although a proposed constitutional amendment providing for tax abatement was defeated by the electors in 1976,⁵² the commission believed that such an incentive is necessary to improve deteriorating urban property and voted to submit the issue to the public once again.⁵³

This issue was among the suggestions initially made to the com-

46. *Id.* at 46 (Robert Mallard, Duval County Property Appraiser); see Suggestions, *supra* note 2, at 43.

47. List of 232, *supra* note 17, at 16.

48. Fla. C.R.C., Proposal 158.

49. 22 Fla. C.R.C. Jour. 337 (Jan. 24, 1978).

50. 1 Transcript of Fla. C.R.C. proceedings 29 (Mar. 8, 1978) (remarks of Commissioner Burkholz). See also Fla. S., Appropriations Comm., Preliminary Analysis — Pending Amendments to Constitution Revision Commission's Proposals 10 (Mar. 7, 1978).

51. 28 Fla. C.R.C. Jour. 535-36 (Mar. 8, 1978).

52. CS/HJR 3982 (1976). The vote was 1,023,416 "against" and 974,184 "for." Fla. Dep't of State, Division of Elections, Tabulation of Official Votes: Florida General Election, November 2, 1976, at 17.

53. Transcript of Fla. C.R.C. proceedings 60 (Jan. 24, 1978) (remarks of Commissioner Plante).

mission⁵⁴ and was designated for further study.⁵⁵ A proposal to accomplish the change, introduced by the Committee on Finance and Taxation,⁵⁶ was adopted.⁵⁷ Technical amendments recommended by the Committee on Style and Drafting were also adopted.⁵⁸

III. SECTION 5: ESTATE, INHERITANCE, AND INCOME TAXES

A proposed new subsection would be added to section 5. It would provide that no income tax on corporate property sale receipts may be levied against any unrealized appreciation in value which occurred prior to November 2, 1971, the date the corporate income tax was established by constitutional amendment. For a detailed analysis of this new subsection, see Note, *Defining a Fair Share: The Proposed Revision to Florida's Corporate Profits Tax*, *supra* this issue.

IV. SECTION 6: HOMESTEAD EXEMPTIONS

The revision commission has proposed a change allowing the legislature to maintain the constant value of the homestead tax exemption based on its value in 1979, so that the value of the exemption will rise and fall with the value of the dollar. For a detailed analysis of this new subsection, see Note, *The False Promise of Homeowner Tax Relief*, *supra* this issue.

V. SECTION 9: LOCAL TAXES

The commission proposes to delete the requirement that only landowners participate in referenda to raise local millage limits and to approve local bond issues. For an analysis of other bonding provisions, see Greenfield, *Flexibility and Fiscal Conservation: Provisions of the 1978 Constitutional Revision Relating to Bond Financing*, *supra* this issue.

VI. SECTION 10: PLEDGING CREDIT

The commission has proposed one change in section 10. Subsection (c) would be changed to give the legislature authority to grant a tax exemption to private persons operating airport or port facilities pursuant to a lease or contract with a local governmental body.

54. Suggestions, *supra* note 2, at 41, 42.

55. List of 232, *supra* note 17, at 15.

56. Fla. C.R.C., Proposal 157.

57. 22 Fla. C.R.C. Jour. 332 (Jan. 24, 1978).

58. Style and Drafting Report, *supra* note 20, at 74, adopted, 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978).

The Florida Supreme Court has ruled that specific constitutional authorization is a prerequisite to a legislatively granted exemption.⁵⁹ Thus, the commission believed it would be prudent to establish the authority for this exemption.⁶⁰

This change was not on the original list of suggestions, nor was a proposal on the issue introduced. Commissioner Birchfield successfully offered an amendment striking the language requiring taxation of the leaseholds and substituting a permissive exemption.⁶¹ However, the commission eventually approved an amendment reinstating the deleted language and giving the legislature the option of taxing or exempting the leasehold interest.⁶²

VIII. SECTIONS 11, 12, 14, 15, 16, 17: BOND PROVISIONS

For a detailed analysis of the bonding provisions, see Greenfield, *Flexibility and Fiscal Conservatism: Provisions of the 1978 Constitution Revision Relating to Bond Financing*, *supra* this issue.

ARTICLE VIII

I. SECTION 1: COUNTIES

There are three proposed changes in this section, which provides the structure for county governments. Subsection (d) would be changed to allow the duties of the clerks of the circuit courts to be divided, as provided for in article V, section 16. This change would be technical in nature and would eliminate the current inconsistency between revised articles V and VIII.¹

This change was suggested by an amendment to a proposal which would eliminate the clerk of the circuit court as a constitutional officer.² This proposal was amended to provide that the clerk's duties could be separated, as provided for in article V, section 16. It was then adopted.³

Another change in section 1 would allow the voters in each non-

59. *Archer v. Marshall*, 355 So. 2d 781 (Fla. 1978). See also Note, *Ad Valorem Taxation of Leasehold Interests in Governmentally Owned Property*, *supra* this issue.

60. Transcript of Fla. C.R.C. proceedings 196 (Apr. 14, 1978) (remarks of Commissioner Birchfield).

61. 30 Fla. C.R.C. Jour. 566 (Apr. 14, 1978) (amend. B).

62. 32 Fla. C.R.C. Jour. 577 (Apr. 21, 1978) (amend. 1).

1. Transcript of Fla. C.R.C. proceedings 227-30 (Jan. 12, 1978) (remarks of Commissioner Overton).

2. Fla. C.R.C., Proposal 54.

3. 19 Fla. C.R.C. Jour. 289-90 (Jan. 12, 1978).

charter county to determine every ten years the method of electing county commissioners—whether from single-member districts, countywide districts, or a combination of both. The procedure for adopting a new plan would be provided by law. Charter counties would be expressly exempt from this provision and could continue to elect county commissioners in any manner specified by their charters.

Currently, noncharter counties are required to elect a five-member, at-large commission. Multimember, or at-large, schemes for the election of local government officers have often been challenged on the grounds that they dilute minority votes.⁴ The commission rejected a proposal which would have required single-member county commission districts,⁵ reasoning that noncharter counties should enjoy the flexibility of home rule.⁶

A suggestion to prohibit at-large elections for county commissions was on the original list submitted to the commission⁷ and received the requisite number of votes for further consideration.⁸ However, the Local Government Committee did not introduce a proposal on the issue.⁹ It did, however, introduce a proposal which would allow the electors of a county to provide for a different plan for election of commissioners.¹⁰

In addition, Commissioner Oliva introduced one proposal which would have established single-member districts for the Dade County Commission,¹¹ and another proposal which would have amended subsection 1(d) to allow for this change.¹² When the latter proposal was debated on the floor, it was amended to provide for single-member districts.¹³ This generated a flurry of activity, including the appointment of a select committee to study the issue.¹⁴ The

4. See, e.g., *David v. Garrison*, 553 F.2d 923 (5th Cir. 1977). See generally Note, *Apportionment Problems In Local Government*, 49 NOTRE DAME LAW. 671 (1974).

5. Fla. C.R.C., Proposal 74, as amended, 18 Fla. C.R.C. Jour. 283 (Jan. 11, 1978). Although this proposal was adopted on January 11, 1978, it failed on reconsideration. 21 Fla. C.R.C. Jour. 325-26 (Jan. 23, 1978).

6. Transcript of Fla. C.R.C. proceedings 18 (Jan. 23, 1978) (remarks of Commissioner DeGrove).

7. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 53 (Sept. 27, 1977) (suggestions submitted by the public) [hereinafter cited as *Suggestions*].

8. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 19 (Sept. 28, 1977) [hereinafter cited as *List of 232*].

9. Fla. C.R.C., Local Government Committee Minutes 1 (Oct. 5, 1977).

10. Fla. C.R.C., Proposal 135, adopted, 15 Fla. C.R.C. Jour. 240 (Dec. 9, 1977).

11. Fla. C.R.C., Proposal 75.

12. Fla. C.R.C., Proposal 74.

13. 18 Fla. C.R.C. Jour. 283 (Jan. 11, 1978).

14. 19 Fla. C.R.C. Jour. 291 (Jan. 12, 1978). The following commissioners were appointed as the select committee: Oliva, chairman; James, Platt, DeGrove, and Birchfield.

select committee introduced a proposal which would have required that a majority of county commissioners be chosen by the electors of the district in which they reside.¹⁵ This proposal was amended to delete the suggested language and to allow the voters to decide on a method of selection every ten years. The amended proposal was adopted.¹⁶ The Committee on Style and Drafting offered various technical amendments which were adopted.¹⁷

The other change in section 1 would be in subsection (h), which pertains to taxation of property within a municipality for services rendered by the county. The new provision would delete the word "exclusively" and would establish a new rule—that property within a municipality cannot be taxed by the county when the services rendered by the county are of "no real and substantial benefit to property or residents within the municipalit[y]."¹⁸ The new language is a codification of a Florida Supreme Court decision interpreting subsection (h).¹⁹

The change was among the suggestions initially made to the commission²⁰ and received the requisite number of votes for further consideration.²¹ Commissioners DeGrove and Overton introduced the proposal to accomplish the change.²² The proposal was amended and adopted.²³ The Committee on Style and Drafting recommended a grammatical change, which was adopted.²⁴

II. SECTION 4: TRANSFER OF POWERS

The commission proposes deleting section 4, which states that counties, municipalities, and special districts may provide for the joint performance of certain duties by transferring powers among themselves. In a recent decision,²⁵ the Florida Supreme Court ruled

15. Fla. C.R.C., Proposal 237.

16. 21 Fla. C.R.C. Jour. 325 (Jan. 23, 1976). The adopted amendment was formerly Proposal 241, which was sponsored by 17 commissioners.

17. 30 Fla. C.R.C. Jour. 559 (Apr. 14, 1978) (amends. 56-57); 32 Fla. C.R.C. Jour. 575 (Apr. 21, 1978) (amend. 27).

18. Fla. C.R.C., Rev. Fla. Const. art. VIII, § 1(h) (May 11, 1978).

19. *City of St. Petersburg v. Briley, Wild & Assocs.*, 239 So. 2d 817 (Fla. 1970).

20. Suggestions, *supra* note 7, at 52.

21. List of 232, *supra* note 8, at 19.

22. Fla. C.R.C., Proposal 234.

23. 24 Fla. C.R.C. Jour. 351 (Jan. 26, 1978).

24. 24 Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 88 (Mar. 6, 1978); 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978).

25. *Sarasota County v. Town of Longboat Key*, 355 So. 2d 1197 (Fla. 1978). In this case, the Sarasota County Commission sought to amend its charter to transfer the responsibility for performing five distinct governmental functions from four Sarasota County cities to the county without the separate approval of the affected municipalities' voters. The court held the plan unconstitutional because it did not comply with art. VIII, § 4 of the constitution.

that the methods provided in this section for the transfer of powers take precedence over any other method, such as that provided for by statute²⁶ or by county charter. Because this constitutional provision, as interpreted, requires that the electors of both governmental units approve the transfer in a special election, the commission believed that transfers are effectively prohibited.²⁷ The elimination of this section would enhance the legislature's ability to prescribe methods for transferring power, and charter counties would continue to accomplish such transfers by methods prescribed in their charters.²⁸

This change was suggested in an amendment to Proposal 258.²⁹ The amendment was adopted,³⁰ reconsidered, and adopted again.³¹

III. SECTION 6: SCHEDULE

The commission has proposed several deletions in the schedule to article VIII in order to conform it to the 1978 revision of the constitution.³² The debate reflects an intent not to deprive any county of any powers it currently has.³³

ARTICLE IX

I. SECTION 1: SYSTEM OF PUBLIC EDUCATION

The commission proposes to change section 1 by adding a subsection which would provide a statement of purpose for the public education system. The new provision would read:

(b) The primary purpose of elementary and secondary education in this state shall be to develop the ability of each student to read, communicate and compute and to provide an opportunity for vocational training. By general law, provision may be made for

26. See FLA. STAT. § 163.01 (1977).

27. 1 Transcript of Fla. C.R.C. proceedings 103-12 (Mar. 9, 1978).

28. *Id.* at 45-46 (remarks of Commissioner D'Alemberte).

29. 28 Fla. C.R.C. Jour. 540 (Mar. 8, 1978) (amend. 1).

30. *Id.*

31. 29 Fla. C.R.C. Jour. 546-47 (Mar. 9, 1978).

32. 30 Fla. C.R.C. Jour. 559-61 (Apr. 14, 1978) (amends. 58, 59, 71).

33. Transcript of Fla. C.R.C. proceedings 47-51 (Apr. 14, 1978) (remarks of Commissioner Mathews). See also 30 Fla. C.R.C. Jour. 561 (Apr. 14, 1978).

*special instruction to aid disadvantaged students with special learning needs.*¹

This new subsection was hotly debated on two different days.² The sponsors of the provision, Commissioners Collins and Groomes, sought to provide a special statement in the constitution acknowledging that the state has a responsibility to provide more than "a uniform system of free public schools"³ Specifically, they attempted to establish a constitutional mandate that the legislature provide special instruction for disadvantaged students.⁴ Their attempts failed.⁵ The provision ultimately adopted by the commission was viewed as a policy statement expressing the mission of the public education system.⁶

Creating a constitutional right to a public education and requiring an equal educational opportunity for all children were among the suggestions originally made to the commission.⁷ Both were designated for further study.⁸ The Declaration of Rights Committee sponsored a proposal creating the right to an equal education.⁹ The Education Committee, which deferred to the Declaration of Rights Committee on the issue,¹⁰ ultimately adopted a resolution support-

1. Fla. C.R.C., Rev. Fla. Const. art. IX, § 1 (May 11, 1978).

2. Transcript of Fla. C.R.C. proceedings 12-66 (Jan. 11, 1978); Transcript of Fla. C.R.C. proceedings 76-113 (Jan. 13, 1978).

3. FLA. CONST. art. IX, § 1.

4. See Fla. C.R.C., Proposal 187, which read: "The primary mission of the uniform system of free public schools of this state shall be the full development of the educational potential of each student from every segment of the community including a means of special instruction for the benefit of students with demonstrated learning disabilities."

5. Proposal 187 was amended to delete the language offered by Commissioners Groomes and Collins and to insert the following language:

The primary mission of elementary and secondary education in this state shall be to develop the ability of each student to read, communicate and compute and to provide an opportunity for vocational training. By general law, provision may be made for special instruction to aid disadvantaged students with special learning needs.

20 Fla. C.R.C. Jour. 308 (Jan. 13, 1978).

6. Transcript of Fla. C.R.C. proceedings 77 (Jan. 13, 1978). The word "purpose" was substituted for "mission" by the Committee on Style and Drafting. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 104 (Mar. 6, 1978).

7. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 2, 57 (Sept. 27, 1977) (suggestions submitted by the public).

8. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 1, 21 (Sept. 28, 1977).

9. Fla. C.R.C., Proposal 26, which provided: "Equality of educational opportunity is guaranteed to each person of this state under a uniform system of free public schools." For discussion of Proposal 26, see Fla. C.R.C., Declaration of Rights Committee Minutes 4-6 (Oct. 20, 1977).

10. See Fla. C.R.C., Education Committee Minutes 3-4 (Oct. 19, 1977).

ing legislatively created compensatory education programs.¹¹

Commissioners Collins and Groomes introduced two proposals on the subject of equal educational opportunity,¹² one of which was ultimately adopted by the commission.¹³ This proposal was significantly amended and was adopted with few dissenting votes.¹⁴ The debate reflects that the majority of the commissioners were hesitant to establish a mandate that the legislature provide special programs for disadvantaged children.¹⁵ Commissioners Collins and Groomes acknowledged that the state already provided many worthwhile educational programs. However, they argued that recent testing has indicated that economically disadvantaged children are not doing as well in school as other children and that the severity of the problem requires mandatory language in the constitution.¹⁶

II. SECTION 2: STATE BOARD OF EDUCATION

The commission proposed a major change in section 2. The new language would replace the existing State Board of Education, consisting of the Governor and the Cabinet, with a nine-member citizen board appointed by the Governor. For an analysis of this section, see Draper, *A New Look for Public Education: The Proposed Revision of Florida's Education Governance System*, *supra* this issue.

III. SECTION 7: STATE UNIVERSITY SYSTEM

A new section pertaining to the state university system is proposed. All four-year, upper-level, and graduate institutions will be governed by a nine-member board of regents. For an analysis of this new section, see Draper, *A New Look for Public Education: The Proposed Revision of Florida's Education Governance System*, *supra* this issue.

ARTICLE X

I. SECTION 1: AMENDMENTS TO U.S. CONSTITUTION

The commission proposed to delete section 1, which pertains to ratification of amendments to the United States Constitution, be-

11. Fla. C.R.C., Committee on Education (Interim Report) 12 (Nov. 15, 1977).

12. Fla. C.R.C., Proposals 78, 187.

13. Fla. C.R.C., Proposal 187; see 20 Fla. C.R.C. Jour. 308 (Jan. 13, 1978). Proposals 26 and 78 were withdrawn on adoption of Proposal 187. *Id.* at 309.

14. 20 Fla. C.R.C. Jour. 308-09 (Jan. 13, 1978).

15. Transcript of Fla. C.R.C. proceedings 76-113 (Jan. 13, 1978).

16. *Id.*

cause it violates the United States Constitution. During the 1972 legislative session the Florida House of Representatives ratified the twenty-seventh amendment to the United States Constitution.¹ But the senate refused to consider the issue,² arguing that section 1 requires that a majority of the legislature considering a proposed amendment be elected after Congress has submitted the amendment for ratification.

Two legislators³ challenged this provision in federal court. They argued that article V of the United States Constitution is a grant of authority to Congress. Therefore, state ratification of a federal constitutional amendment is a purely federal function which transcends state constitutional limitations. The district court, relying on two Supreme Court decisions holding similar provisions unconstitutional,⁴ held for the legislators.⁵

The Committee on Style and Drafting alerted the commission to the problem.⁶ The commission adopted the committee's suggestion to delete section 1.⁷

II. SECTION 3: HOMESTEAD; FORCED SALE EXEMPTIONS

The commission has proposed significant changes in the section that provides for the homestead exemption from forced sale. For a detailed analysis of the proposed new section, see Wall, *Homestead and the Process of History: The Proposed Changes in Article X, Section 4, supra* this issue.

III. SECTION 4: COVERTURE AND PROPERTY

There is one proposed change in section 4 (currently section 5). It would remove the exception allowing the legislature to provide for dower and curtesy. The debate indicates that a majority of commissioners believed the exception is unnecessary because of recent legislation abolishing dower and curtesy.⁸

This change was among the suggestions originally recommended to the commission,⁹ but it did not receive the requisite number of

1. Fla. HCR 4440, FLA. H.R. Jour. 904-05 (1972).

2. *Id.* at 1449.

3. Representatives Edward J. Trombetta and Richard Pettigrew.

4. *Leser v. Garnett*, 258 U.S. 130 (1922); *Hawke v. Smith*, 253 U.S. 221 (1920).

5. *Trombetta v. Florida*, 353 F. Supp. 575 (M.D. Fla. 1973).

6. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission app. E-1 (Mar. 6, 1978).

7. Fla. C.R.C., Proposal 258, 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978).

8. Transcript of Fla. C.R.C. proceedings 22-23 (Dec. 9, 1977) (remarks of Commissioner Collins); FLA. STAT. § 732.111 (1977).

9. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 61 (Sept. 27,

votes for further consideration. The Committee on the Declaration of Rights considered the issue,¹⁰ however, and introduced a proposal to accomplish the change.¹¹ The proposal was adopted as introduced.¹²

IV. SECTION 12: NO SOVEREIGN IMMUNITY

The commission proposed a major change in section 12. The new language would eliminate the doctrine of sovereign immunity.

For an analysis of this section, see Budetti & Knight, *The Latest Event in the Confused History of Municipal Tort Liability*, *supra* this issue.

V. SECTION 13: RETIREMENT SYSTEMS BENEFIT CHANGES

The only proposed change in section 13 (currently 14) would require the legislature to prescribe by law a method for determining whether an increase in retirement or pension benefits is actuarially sound. Current section 14 is a recent amendment to the constitution, adopted by the voters in November, 1976.¹³ The change, proposed by Commissioner D'Alemberte¹⁴ and moved by Commissioner Mathews, was said to be necessary because of the haphazard manner in which actuarial soundness is currently verified.¹⁵

The change was not on the original list of suggestions, nor was it considered by a committee. Commissioner D'Alemberte's proposal was adopted without amendments.¹⁶ Grammatical changes proposed by the Committee on Style and Drafting were adopted later.¹⁷

VI. SECTION 14: STATE COMPENSATION COMMISSION

This proposed new section would establish a compensation commission. The commission would be appointed by the Governor and would make biennial recommendations to the legislature on the compensation of all constitutional officers. The commission's recommendations would be advisory only, final authority resting with

1977) (suggestions submitted by the public) [hereinafter cited as Suggestions].

10. Fla. C.R.C., Declaration of Rights Committee Minutes 6 (Nov. 14, 1977).

11. Fla. C.R.C., Proposal 109.

12. 15 Fla. C.R.C. Jour. 238 (Dec. 9, 1977).

13. Fla. HJR 291 (1975), 1975 Fla. Laws 1122.

14. Fla. C.R.C., Proposal 245.

15. Transcript of Fla. C.R.C. proceedings 181 (Jan. 27, 1978) (remarks of Commissioner Mathews).

16. 25 Fla. C.R.C. Jour. 358 (Jan. 27, 1978).

17. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 112-13 (Mar. 6, 1978), *adopted*, 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978).

the legislature.¹⁸ A compensation commission is currently provided for by statute.¹⁹ However, it has not met for five years.²⁰ The debate reflects a belief that upon acquiring constitutional status, the compensation commission would become an active group²¹ and would relieve the legislature of the pressure inherent in recommending pay raises for political officers.²²

The concept of a state compensation commission was considered by the revision commission on three occasions. A proposal to amend article III to establish a compensation commission was defeated.²³ Another proposal, deleting the language of article V, section 14 and establishing a judicial compensation commission, was also defeated.²⁴ The language adopted was proposed as an amendment to Proposal 258, the first draft of the revised constitution, which served as a working document for further changes.²⁵ The Committee on Style and Drafting recommended grammatical changes, which were adopted.²⁶

ARTICLE XI

I. SECTION 2: REVISION COMMISSION

Three changes have been proposed in section 2. Two of them pertain to the convening of the revision commission. The first change would delete the language that calls for the convening of a revision commission ten years after the adoption of the 1968 constitution. The Committee on Style and Drafting recommended the

18. 2 Transcript of Fla. C.R.C. proceedings 111 (Mar. 8, 1978) (remarks of Commissioner Ryals).

19. FLA. STAT. § 112.192 (1977).

20. 2 Transcript of Fla. C.R.C. proceedings 111 (Mar. 8, 1978) (remarks of Commissioner Ryals).

21. *Id.* at 112 (remarks of Commissioner Ryals).

22. *Id.* at 110 (remarks of Commissioner Clark).

23. Fla. C.R.C., Proposal 40, *failed*, 7 Fla. C.R.C. Jour. 138 (Nov. 15, 1977). A suggestion to amend article III to provide for this was among the initial suggestions to the commission and received the requisite votes for further consideration. Suggestions, *supra* note 9, at 20; Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 7 (Sept. 28, 1977) [hereinafter cited as List of 232].

24. Fla. C.R.C., Proposal 233, *failed*, 24 Fla. C.R.C. Jour. 350 (Jan. 26, 1978). A suggestion to amend article V to provide for an independent commission to establish judicial salaries was among the original suggestions to the commission and received the requisite votes for further consideration. Suggestions, *supra* note 9, at 36; List of 232, *supra* note 23, at 13.

25. 28 Fla. C.R.C. Jour. 542 (Mar. 8, 1978) (amend. 3).

26. 30 Fla. C.R.C. Jour. 560 (Apr. 14, 1978) (amend. 64).

deletion because the event has already occurred.¹ That committee also suggested 1997 as the year to convene the next commission. The date was changed to 1996 by Commissioners Apthorp and Barkdull's amendment, which was adopted by the commission.²

The Apthorp and Barkdull amendment also would change the first sentence of the section to provide for the establishment of revision commissions thirty days after adjournment of the organizational legislative session rather than the regular session.³ The debate reflects that a majority of commissioners believed that the next commission would need fourteen months rather than ten to complete its work.⁴ The commission specified the date of the next revision commission in order to avoid the controversy that arose in 1977 about when the 1978 Constitution Revision Commission should convene.⁵

The other proposed change in section 2 would remove the attorney general from the revision commission. This change, recommended by the Committee on Style and Drafting,⁶ anticipates abolition of the elective office of attorney general. The chief justice of the supreme court would appoint four rather than three members. Thus, the total membership of the commission would continue to be thirty-seven.

II. SECTION 3: INITIATIVE

Only one change has been proposed in the section on initiative. The new provision would specify a two-year time limit during which the requisite number of signatures must be filed with the secretary of state. Currently, a time limit is not specified, so apparently one could take as long as he wanted to accumulate the necessary signatures.⁷

1. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 113 (Mar. 6, 1978), *adopted*, 30 Fla. C.R.C. Jour. 570 (Apr. 14, 1978) (introduction explains that interlining represented schedule items deleted by the Committee on Style and Drafting because the event had occurred).

2. 28 Fla. C.R.C. Jour. 543 (Mar. 8, 1978) (amend. 3).

3. *Id.*

4. 2 Transcript of Fla. C.R.C. proceedings 117 (Mar. 8, 1978).

5. In 1977, Governor Reubin Askew requested an advisory opinion from the supreme court on whether the revision commission should be appointed in 1977 or 1978. The court responded that the commission should convene in 1977. *In re Advisory Opinion of the Governor*, 343 So. 2d 17 (Fla. 1977).

6. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission 583 (May 5, 1978); 33 Fla. C.R.C. Jour. 584 (May 5, 1978).

7. See 2 Transcript of Fla. C.R.C. proceedings 114 (Mar. 8, 1978). Commissioner Mathews maintained that "[w]ithout this it means that you could for 10 or 15 years try to accumulate signatures. There is a practical problem because, you know, people die during that period of time." *Id.*

The new provision would specify that the initiative process is begun by filing a copy of the proposed constitutional amendment with the secretary of state. The debate reflects that the commission had no intent to supersede statutes requiring that the necessary signatures be filed with the secretary of state by a specific date in order to be placed on the ballot.⁸

This change was not on the original list of suggestions, nor was it initiated by a commissioner. It was brought to the attention of the commission by the Committee on Style and Drafting.⁹ After a short explanation of the proposed change by Commissioner Mathews, the new language was unanimously adopted.¹⁰

III. SECTION 5: AMENDMENT OR REVISION ELECTION

The commission has proposed two major changes in section 5. The first change would provide for the distribution of a voter pamphlet which explains any proposed amendments or revisions to the constitution. The pamphlet would include the full text of every proposed change as well as the arguments both pro and con, and would be mailed to each household in the state at which a registered voter resides. The current section requires only publication of the proposed amendment or revision in one newspaper in each county during the tenth and sixth weeks prior to the election. The new provision is permissive and would give the state the option to choose either method of publication.¹¹

This change was suggested by Commissioner James, who introduced a similar bill in the legislature.¹² The change was adopted by the commission,¹³ as were several technical amendments offered by the Committee on Style and Drafting.¹⁴

8. *Id.* at 115.

9. 28 Fla. C.R.C. Jour. 543 (Mar. 8, 1978) (amend. 4).

10. *Id.*

11. The legislature would appropriate the money, and the secretary of state would implement either the printing of the pamphlet or publication of the text in newspapers. The debate indicates that it was the intent of the commission to allow the legislature the flexibility to choose either method. Transcript of Fla. C.R.C. proceedings 178 (Apr. 14, 1978).

12. A voter pamphlet was approved by the 1978 Florida Legislature. Fla. HB 720 (1978). The Governor vetoed the bill, however, because the provisions of the bill requiring a brief statement explaining the effect of the proposal in laymen's terms, as well as the arguments in favor and in opposition, were deleted from the final version of the bill. The pamphlet would have cost \$750,000 for distribution, and the Governor questioned the expenditure. Letter from R. Askew to B. Smathers, Sec'y of State (June 23, 1978) (veto message).

13. 30 Fla. C.R.C. Jour. 565 (Apr. 14, 1978).

14. 32 Fla. C.R.C. Jour. 574-75 (Apr. 21, 1978) (amends. 19-21A). For a discussion of the need for additional notice requirements in the constitution, see Note, *Legislative Efforts to Amend the Florida Constitution: The Implications of Smathers v. Smith*, 5 FLA. ST. U.L. REV. 747 (1977).

The other proposed change in section 5 would address the problem of conflicting amendments or revisions adopted by the electors. The change would provide that the amendment or revision receiving the greatest number of votes would prevail. The new language would also provide that the supreme court would have original jurisdiction in an expedited proceeding to determine whether a conflict existed and that the new subsections could apply to conflicts resulting from the 1978 general election.

The existing provision does not address the issue of conflicting amendments or revisions. The commission believed that the proposed change is necessary because the variety of methods of proposing changes in the constitution makes conflict likely.¹⁵

A method of reconciling conflicting amendments or revisions was on the original list of suggestions made to the commission¹⁶ and received the required number of votes for further consideration.¹⁷ The issue was referred to the Judiciary Committee, which introduced a proposal suggesting that changes initiated by certain methods, for example, constitutional convention, take precedence over changes initiated by other methods.¹⁸ An amendment deleting this language and providing that the change receiving the greatest number of votes would prevail was adopted.¹⁹ The amended proposal passed.²⁰

The Committee on Style and Drafting recommended that subsections (e) and (f) be added,²¹ and the commission agreed.²² The committee recommended a further technical amendment, which was adopted.²³

ARTICLE XII

I. SECTIONS 1-8, 10-17: SCHEDULE

The Committee on Style and Drafting has proposed various technical changes in the schedule. The changes would facilitate an or-

15. Transcript of Fla. C.R.C. proceedings, 256-57 (Jan. 11, 1978).

16. Fla. C.R.C., Proposed Revisions to the Florida Constitution 66 (Sept. 27, 1977) (suggestions submitted by the public).

17. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 24 (Sept. 28, 1977).

18. Fla. C.R.C., Proposal 208.

19. 18 Fla. C.R.C. Jour. 284 (Jan. 11, 1978) (amend. 2).

20. 18 Fla. C.R.C. Jour. 284 (Jan. 11, 1978).

21. 26 Fla. C.R.C. Jour. 524 (Mar. 6, 1978) (amend. 2).

22. 26 Fla. C.R.C. Jour. 524 (Mar. 6, 1978).

23. 30 Fla. C.R.C. Jour. 560 (Apr. 14, 1978) (amend. 65).

derly transition from the 1968 constitution to the proposed revision and would outline the roles of the secretary of state and attorney general in assisting in the transition.¹ Some sections of the schedule would be deleted because the events to which they refer have occurred.² Other sections would be transferred or renumbered.³

II. SECTION 9: BONDS

The commission is recommending several changes in section 9. For a detailed analysis of these recommendations, see Greenfield, *Flexibility and Fiscal Conservatism: Provisions of the 1978 Constitutional Revision Relating to Bond Financing*, *supra* this issue.

1. See Fla. C.R.C., Final Summary of Action Taken on All Commission Proposals and Amendments, art. XII, §§ 1-17 (June 22, 1977).

2. See FLA. CONST. art. XII, §§ 1-2, 4-6, 10, 12-14, 16-17.

3. Section 15 was transferred to section 8; section 3 was renumbered section 4; section 6 was renumbered section 5; section 7 was renumbered section 6; and section 8 was renumbered section 7.

